

United States ¹²
Circuit Court of Appeals
For the Ninth Circuit.

DAVID JAMES FLYNN, BARBARA FLYNN, and
JOHN FLYNN, Infants, by Their Guardian and
Prochein Ami, HONORA DELLA FLYNN,
HONORA DELLA FLYNN,

Appellants,
vs.

E. A. CHRISTENSON, HANS J. LUNVALDT, CHARLES
E. SUDDEN, J. H. BAXTER, A. TAVIERA,
W. B. GODFREY, Jr., F. M. DELANO, WALTER
V. ROHLFFS, R. L. ANDERSON, GEO. F.
QUIGLEY, D. W. C. TIETJEN, CECELIA F.
SUDDEN, HENRY BROOKS, R. Y. TAYLOR,
ROBERT SUDDEN, JAS. JOHNSON CO., a Cor-
poration, ALBERT ROWE, J. J. STAIGER,
EDMUND JACOBS, R. C. SUDDEN, GEO. JOHN-
SON, JOHN L. HUBBARD, H. PILTZ, LOUIS
POOLE,

Appellees.

Apostles on Appeal.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,

First Division.

FILED

SEP 8 - 1920

United States
Circuit Court of Appeals
For the Ninth Circuit.

DAVID JAMES FLYNN, BARBARA FLYNN, and
JOHN FLYNN, Infants, by Their Guardian and
Prochein Ami, HONORA DELLA FLYNN,
HONORA DELLA FLYNN,

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vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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UNITED STATES OF AMERICA.
District Court of the United States, Northern Dis-
trict of California.

No. 13,310.

CLERK'S OFFICE.

DAVID JAMES FLYNN, BARBARA FLYNN and
JOHN FLYNN, Infants by Their Guardian
and *Prochein Ami*, HONORA DELLA
FLYNN, HONORA DELLA FLYNN,
Libelants,

vs.

E. A. CHRISTENSEN et al.,

Respondents.

Praecipe for Transcript of Record.

To the Clerk of Said Court:

Sir: Please issue and incorporate in the apostles on
appeal the following:

Amended libel.

Answer to amended libel.

All depositions and testimony taken in court.

All opinions of the court.

Decree.

Notice of appeal.

Assignment of errors.

Cost bond on appeal; and

Notice of filing cost bond on appeal.

ANDROS & HENGSTLER,
Proctors for Libelants.

[Endorsed]: Filed Jul. 20, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [1*]

*Page-number appearing at foot of page of original certified Apostles
on Appeal.

No. 13,310.

DAVID JAMES FLYNN, BARBARA FLYNN and
JOHN FLYNN, Infants by Their Guardian
and *Prochein Ami*, HONORA DELLA
FLYNN, HONORA DELLA FLYNN,
Libelants,

vs.

E. A. CHRISTENSON, HANS J. LUNVALDT,
CHARLES E. SUDDEN, J. H. BAXTER,
A. TAVIERA, W. B. GODFREY, Jr., F. M.
DELANO, WALTER V. ROHLFFS, R. L.
ANDERSON, GEO. F. QUIGLEY, D. W. C.
TIETJEN, CECELIA F. SUDDEN, HENRY
BROOKS, R. Y. TAYLOR, ROBERT SUDDEN,
JAMES JOHNSON CO., a Corporation,
ALBERT ROWE, J. J. STAIGER,
EDMUND JACOBS, R. C. SUDDEN, GEO.
JOHNSON, JOHN L. HUBBARD, H.
PILTZ, LOUIS POOLE,

Respondents.

Statement of Clerk U. S. District Court.**PARTIES.**

Libelants: David James Flynn, Barbara Flynn and
John Flynn, Infants, by Their Guardian and
Prochein Ami, Honora Della Flynn, Honora
Della Flynn.

Respondents: E. H. Christenson, Hans J. Lunvaldt,
Charles E. Sudden, J. H. Baxter, A. Taviera, W.
B. Godfred, Jr., F. M. Delano, Walter V. Rohlfss,
R. L. Anderson, George F. Quigley, D. W. C.
Tietjen, Cecelia F. Sudden, Henry Brooks, R. Y.

Taylor, Robert Sudden, Jas. Johnson Co., a Corporation, Albert Rowe, J. J. Staiger, Edmund Jacobs, R. C. Sudden, George Johnson, John K. Hubbard, H. Piltz, Louis Poole.

PROCTORS.

For Libelants: ANDROS & HENGSTLER, San Francisco, California.

For Respondents: NATHAN H. FRANK and IRVING H. FRANK, San Francisco, California.
[2]

PROCEEDINGS:

1904.

August 12. Filed petition of Hanora Della Flynn to bring action.

Filed order permitting Hanora Della Flynn to bring action for said minors, David James Flynn, Barbara Flynn and John Flynn.

Filed verified libel for damages.

Issued citation for respondents, which was afterwards returned with the following return of the U. S. Marshal endorsed thereon:

“I have served this writ personally by copy on Charles E. Sudden and Edwin A. Christensen, partners under the name and style of Sudden & Christensen, this 17th day of August, A. D. 1904.

JOHN H. SHINE,
U. S. Marshal.
By Albert S. Dingley,
Deputy Marshal.”

September 23. Filed deposition of D. W. Nilsson,
taken on behalf of respondents.

November 25. Filed amended libel for damages.
1905.

May 2. Filed substitution and acceptance of
Messrs. Andros & Hengstler, as
proctors for libelants.

13. Filed answer to amended libel.

July 31. Filed deposition of Geo. Thomas
Cainan, taken on behalf of libel-
ants.

August 18. Filed deposition of August Ehlert,
taken on behalf of libelants.

1908.

May 4. Received deposition of Chas R.
Woodson, taken on behalf of libel-
ants.

1919.

Nov. 25. Received depositions of Charles J.
Baker and John W. Buckley,
taken on behalf of libelant. [3]

1920.

April 12. This cause came on this day for
hearing before the Honorable
FRANK S. DIETRICH, Judge.
After hearing the Court ordered
that the case be submitted on the
record, and briefs to be filed.

April 16. The Court this day filed an opinion
in which it was ordered that a de-
cree be entered in favor of libel-
ants.

May 1. The Court this day filed an opinion in which it was ordered that a decree be entered in favor of libelant for \$6,500.00, instead of amount previously awarded.

May 27. Filed decree.

July 15. Filed notice of appeal.
 Filed assignment of errors.
 Filed bond for costs.
 Filed notice of filing bond for costs.

20. Filed praecipe for apostles.
 Filed deposition of Chas. R. Woodson, taken on behalf of libelant.
 Filed deposition of Chas. J. Baker and John W. Buckley, taken on behalf of libelant.
 Filed reporter's transcript. [4]

District Court of the United States, in and for the Northern District of California.

DAVID JAMES FLYNN, BARBARA FLYNN and JOHN FLYNN, Infants by Their Guardian and *Prochein Ami*, HANORA DELLA FLYNN, HANORA DELLA FLYNN,
vs.

E. A. CHRISTENSON, HANS J. LUNVALDT, CHARLES E. SUDDEN, J. H. BAXTER, A. TAVEIRA, W. B. GODFREY, Jr., F. M. DELANO, WALTER V. ROHLFFS, R. L. ANDERSON, GEO. F. QUIGLEY, D. W. C.

TIETJEN, CECELIA F. SUDDEN, HENRY BROOKS, R. Y. TAYLOR, ROBERT SUDDEN, JAMES JOHNSON CO., a Corporation, ALBERT ROWE, J. J. STAIGER, EDMUND JACOBS, R. C. SUDDEN, GEO. JOHNSON, JOHN L. HUBBARD, H. PILTZ, LOUIS POOLE,

Amended Libel.

To the Honorable ——, the Judge of the District Court in and for the Northern District of California:

The amended libel of David James Flynn, Barbara Flynn, and John Flynn, Infants, herein appearing by their Guardian and *prochein ami* Hanora Della Flynn, Hanora Della Flynn, all of the City of San Pedro, County of Los Angeles, State of California, against E. A. Christenson, Hans J. Lunvaldt, Charles E. Sudden, J. H. Baxter, A. Taveira, W. B. Godfrey, Jr., F. M. DeLano, Walter V. Rohlfss, R. L. Anderson, Geo. F. Quigley, D. W. C. Teitjen, Cecelia F. Sudden, Henry Brooks, R. L. Taylor, Robert Sudden, Jas. Johnson Co., Albert Rowe, J. J. Staiger, Edmund Jacobs, R. C. Sudden, Geo. Johnson, John L. Hubbard, H. Piltz, Louis Poole, in a cause of action, civil and maritime, allege as follows: [5]

I.

That said defendants are and at all times herein mentioned were joint owners of the schooner "Sophie Christenson" in the proportion as follows. to wit:

E. A. Christenson 2/32; Jans J. Lunvaldt 3/32; Charles E. Sudden 3/64; J. H. Baxter 1/32; A. Taveira 1/64; W. B. Godfred, Jr., 1/32; F. M. De-

Lano 1/32; Walter V. Rohlffs 1/32; R. L. Anderson 1/32; Geo. F. Quigley 1/32; D. W. C. Teitjen 2/32; Cecelia F. Sudden 1/32; Henry Brooks 1/32; R. L. Taylor 1/32; Robert Sudden 5/32; Jas. Johnson Co. 1/32; Albert Rowe 2/32; J. J. Staiger 1/32; Edmund Jacobs 1/32; R. C. Sudden 1/32; Geo. Johnson 1/32; John L. Hubbard 1/32; H. Piltz 1/32; Louis Poole 1/32.

II.

That defendant, Jas. Johnson Co., is a corporation, incorporated under the laws of the State of California.

III.

That defendants are and at all times herein mentioned were residents of the said District.

IV.

That said Hanora Della Flynn is the widow of James Flynn, and said David James Flynn, Barbara Flynn, and John Flynn are the children of the marriage of said Hanora D. Flynn and said James Flynn, deceased; that all of said children are infants under the age of fourteen years.

V.

That said James Flynn died intestate, and said plaintiffs are the next of kin, and sole heirs of said James Flynn, deceased.

VI.

That on the 16th day of September, 1903, said Hanora Della Flynn was by an order of the Superior Court of the County of [6] Los Angeles, California, duly given and made and duly appointed the guardian of the persons and property of said infant

plaintiffs, and all of them, and duly qualified as such guardian, and ever since has been and is now the duly appointed, qualified and acting guardian of the persons and property of each and all of said infants; that said infants do herein appear by the said Hanora Della Flynn, their *prochein ami*, and duly appointed guardian, as aforesaid.

VII.

That said James Flynn, deceased, was the sole support of plaintiffs, and by his labor and exertions maintained and supported said plaintiffs *up the time* of his decease.

VIII.

That on the third day of August, 1903, the vessel "Sophie Christenson" was lying in the harbor of San Pedro, County of Los Angeles, State of California, discharging a cargo of lumber; that said harbor is a navigable body of water connected with the Pacific Ocean and is within the maritime jurisdiction of the United States; that defendants were at said time and are now the owners of said vessel.

IX.

That on said date, and while said vessel was lying in said harbor, discharging cargo as aforesaid, said James Flynn was employed by the owners of said vessel, with others, to remove said cargo from said vessel to the wharf at which said vessel was moored as said lumber was being hoisted from the hold of said vessel.

X.

That while so employed by defendants, and while working in said employ in a usual and proper man-

ner, defendants and their agents, the officers of said vessel, were hoisting from the [7] hold of said vessel the lumber with which said vessel was loaded, the same being hoisted in lots, parcels, or slingloads, made up of heavy planks and timbers, bound together by rope slings.

XI.

That one of said slingloads of lumber was hoisted from the hold of said vessel, under the direction of defendants and its officers, in a grossly negligent manner, and while being so hoisted was handled in so negligent a manner by defendants and their agents, and was so insufficiently secured in said rope sling, and said sling was so inadequately secured and was so inefficient for the purpose for which it was used, that said slingload of lumber broke apart while in the air above the deck of said vessel.

XII.

That some of said pieces of lumber slipped from said sling by and through the negligence of defendants, their officers and agents, and fell upon and struck the said James Flynn while he was working on the deck of said vessel, and without any want of care or negligence on the part of said Flynn; that said plank struck the head of said Flynn with such force that the said Flynn was stunned and made unconscious and within a few hours thereafter the said James Flynn died as the direct consequence of said blow from said plank.

XIII.

That the said sling was weak and inadequate, and of improper material for the purpose for which the

same was being used, and was insufficient in size, and was too short to admit of the same being properly adjusted and fastened to secure said slingload of lumber [8]

XIV.

That the officers and agents of said vessel in charge of hoisting said lot of lumber from said hold were grossly careless and negligent in the manner of hoisting same and in the means employed by them for so doing.

XV.

That the negligence and carelessness of defendants and their agents above set out directly caused the death of said James Flynn, without fault on his part, and while he was engaged in carrying out, in a careful manner and without negligence on his part, the work for which he was employed by defendants.

XVI.

That plaintiffs by said negligence of defendants and by the death of said James Flynn are deprived of the care and support and maintenance they received from said James Flynn, and which said Flynn would have continued to contribute, and have suffered great mental anguish from his said death, and are damaged and damnified by his said death, and by said acts of defendants resulting in his death, in the sum of Twenty Thousand (\$20,000) Dollars.

XVII.

That all and singular the premises are true and are within the admiralty jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libelants pray that process in due form of law, according to the course of this Honorable Court in cases of admiralty jurisdiction, may issue against the said E. A. Christenson, Hans J. Lunvaldt, Charles E. Sudden, J. H. Baxter, A. Taveira, W. B. Godfrey, Jr., F. M. De Lano, Walter V. Rohlffs, [9] R. L. Anderson, Geo. F. Quigley, D. W. C. Tietjen, Cecilia F. Sudden, Henry Brooks, R. L. Taylor, Robert Sudden; Jas. Johnson, Co., a Corporation, Albert Rowe, J. J. Staiger, Edmund Jacobs, R. C. Sudden, George Johnson, John L. Hubbard, H. Piltz, Louis Poole, and that they may be required to answer under oath this libel and the matters herein contained; and that this Honorable Court would be pleased to decree the payment of the damages aforesaid with costs, and that the libelants may have such other and further relief as in law and justice she may be entitled to receive.

HANORA DELLA FLYNN,
Guardian and *Prochein Ami* of Infant Libelants,
David James Flynn, Barbara Flynn, and John Flynn.

PLATT & BAYNE,
HAROLD E. PLATT,
GEO. J. LEOVY,

Proctors for Libelant.

State of California,
Southern Dist. of California,—ss.

Subscribed and sworn to before me this 19th day of November, 1904, by Hanora Della Flynn, and by

Hanora Della Flynn, guardian and *prochein ami* of infant libelants.

HANORA DELLA FLYNN.

[Seal]

WM. M. VAN DYKE,

Clerk U. S. Circuit Court, Southern District of California.

By Chas. N. Williams,

Deputy.

Service of the within accepted this 25th day of November, 1904.

FRANK and MANSFIELD,

Attorneys for All Defts.

[Endorsed]: Filed Nov. 25, 1904, at 10 o'clock and 55 minutes A. M. Geo. E. Morse, Clerk. By J. S. Manley, Deputy Clerk. [10]

In the District Court of the United States, in and for the Northern District of California.

DAVID JAMES FLYNN, BARBARA FLYNN,
and JOHN FLYNN, Infants, by Their
Guardian and *Prochein Ami*, HANORA
DELLA FLYNN, HANORA DELLA
FLYNN,

vs.

E. A. CHRISTENSON, HANS J. LUNVALDT,
CHARLES E. SUDDEN, J. H. BAXTER,
A. TAVEIRA, W. B. GODFREY, Jr.,
F. M. DELANO, WALTER V. ROHLEFFS,
R. L. ANDERSON, GEO. F. QUIGLEY,

D. W. C. TIETJEN, CECELIA F. SUDDEN, HENRY BROOKS, R. Y. TAYLOR, ROBERT SUDDEN, JAS. JOHNSON CO., a Corporation, ALBERT ROWE, J. J. STAIGER, EDMUND JACOBS, R. C. SUDDEN, GEO. JOHNSON, JOHN L. HUBBARD, H. PILTZ, LOUIS POOLE.

(Answer to Amended Libel.)

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States for the Northern District of California:

The answer of E. A. Christenson, Hans J. Lunvaldt, Charles E. Sudden, J. H. Baxter, A. Ta veira, W. B. Godfrey, Jr., F. M. DeLano, Walter V. Rohlfss, R. L. Anderson, Geo. F. Quigley, D. W. C. Tietjen, Cecelia F. Sudden, Henry Brooks, R. Y. Taylor, Robert Sudden, Jas. Johnson Co., a Corporation, Albert Rowe, J. J. Staiger, Edmund Jacobs, R. C. Sudden, Geo. Johnson, John L. Hubbard, H. Piltz and Louis Poole, to the Amended Libel of David James Flynn, Barbara Flynn and John Flynn, infants, herein appearing by their guardian and *prochein ami* Hanora Della Flynn, Hanora Della Flynn, in a cause of action, civil and maritime, alleges:

I.

Answering unto the Fourth Article in said amended libel, these respondents are ignorant of the matters and things therein set forth, so that they can neither admit nor deny the same, wherefore they call for proof thereof. [11]

II.

Answering unto the Fifth Article in said amended libel these respondents are ignorant of the matters and things therein set forth, so that they can neither admit nor deny the same, wherefore they call for proof thereof.

III.

Answering unto the Sixth Article in said amended libel these respondents are ignorant of the matters and things therein set forth, so that they can neither admit nor deny the same, wherefore they call for proof thereof.

IV.

Answering unto the Seventh Article in said amended libel these respondents are ignorant of the matters and things therein set forth, so that they can neither admit nor deny the same, wherefore they call for proof thereof.

V.

Answering unto the Ninth Article in said amended libel, these respondents admit that while said vessel was lying in said harbor discharging cargo, men were employed to remove said cargo from said vessel to the wharf at which said vessel was moored as said lumber was being hoisted from the hold of said vessel, but as to whether or not said James Flynn in said amended libel mentioned was one of the men so employed, these respondents are ignorant, so that they can neither admit nor deny the same, wherefore they call for proof thereof.

VI.

Answering unto the Tenth Article, these respond-

ents admit that the officers and crew of said vessel were hoisting from the hold of said vessel the lumber with which said vessel was loaded, the same being hoisted in lots, parcels or slingloads made up of heavy planks and timbers bound together with rope [12] slings, but whether said James Flynn was one of the men employed in said operation, or whether he was working in said employ in a usual and proper manner, these respondents are ignorant, so that they can neither admit nor deny the same, wherefore they call for proof thereof.

VII.

Answering unto the Eleventh Article in said amended libel, these respondents deny that any of said slingloads were hoisted from the hold of said vessel under the direction of said respondents, or of any or either of them, and they further deny that said respondents, or any or either of them, were at all present, or in anywise whatsoever participated in the work of unloading said vessel.

These respondents further, upon their information and belief, deny that any of said slingloads of lumber were hoisted from the hold of said vessel in a negligent manner, or were handled in a negligent manner, or that the same or any of them were insufficiently secured in said rope sling, or that the said sling was inadequately secured, or was inefficient for the purpose for which it was used, or that said slingload of lumber broke apart while in the air above the deck of said vessel.

VIII.

Answering unto the Twelfth Article, these re-

spondents deny that some or any of said pieces of lumber slipped from said sling, by or through the negligence of these respondents or of any of them, and further on their information and belief deny that some or any pieces of lumber slipped from said sling by or through the negligence of any of the officers or agents of [13] these respondents. As to the allegation in said article that some pieces of lumber fell upon and struck the said James Flynn, these respondents are ignorant, so that they can neither admit nor deny the same, wherefore they call for proof thereof. But said respondents admit that some pieces of lumber fell and struck a man working on board said ship, but deny that the same was without any want of care or without negligence on the part of the man so hurt. On the contrary, these respondents upon their information and belief allege that the said accident to the said man was due solely and entirely to his own negligence.

As to the allegation therein that the same James Flynn died as the direct consequence of said blow from said plank, these respondents are ignorant, so that they can neither admit nor deny the same, wherefore they call for proof thereof.

IX.

Answering unto the Thirteenth Article in said amended libel, these respondents upon their information and belief deny that said sling was weak or inadequate, or of improper material for the purpose for which the same was being used, or that the same was insufficient in size, or was too short to ad-

mit of the same being properly adjusted or fastened to secure said load of lumber.

X.

Answering unto the Fourteenth Article in said amended libel, these respondents on their information and belief deny that the officers or agents of said vessel in charge of the hoisting of said lot of lumber from said hold were careless or negligent in the manner of hoisting the same, or in the means employed by them for so doing. [14]

XI.

Answering unto the Fifteenth Article in said amended libel, these respondents deny that any negligence or carelessness on the part of said respondents, or either of them, caused the death of said James Flynn. And they further deny, upon information and belief, that any carelessness or negligence on the part of their agents, caused the death of said James Flynn, or that said death was caused without fault on his part, or that said James Flynn was then or there engaged in a careful manner, and without negligence on his part, in the work for which he was employed by respondents.

XII.

Answering unto the Sixteenth Article in said amended libel, these respondents are ignorant of the matters and things therein set forth, so that they can neither admit nor deny the same, wherefore they call for proof thereof.

XIII.

Answering unto the Seventeenth Article, these re-

spondents deny that all or singular the premises in said amended libel set forth are true.

WHEREFORE, these respondents pray that said amended libel be dismissed, and for their costs incurred herein.

E. A. CHRISTENSON,
For Self and Co-owners.
NATHAN H. FRANK,
Proctor for Respondents.

Northern District of California,—ss.

Sworn to before me this 13th day of May, A. D. 1905.

[Seal] JOHN FOUGA,
Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed May 13, 1905. Jas. P. Brown,
Clerk. By John Fouga, Deputy Clerk. [15]

UNITED STATES OF AMERICA.

District Court of the United States, Northern District of California.

IN ADMIRALTY.

DAVID JAMES FLYNN et al.,

Libelants,

vs.

CHARLES E. SUDDEN et al.,

Respondents.

Notice of Taking Deposition of D. W. Nilsson.

To Messrs. Rice and Bayne, Horace G. Platt, Esq., and George J. Leroy, Esq., Proctors for David James Flynn et al., Libelants Herein.

You are hereby notified that D. W. Nilsson will be examined, *de bene esse*, in the above-entitled cause, on behalf of the respondents before Geo. E. Morse, Esquire, duly appointed by the District Court of the United States for the Ninth Circuit, Northern District of California, a United States Commissioner, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the Act of Congress in that behalf, on the 17th day of September, A. D. 1904, at 10 o'clock A. M., at the offices of Messrs. Frank and Mansfield at Room 23, No. 206 Sansome St., in the City and County of San Francisco, in the District aforesaid; and you are hereby further notified to then and there appear and propound such questions to said witness as you may deem fit.

The cause for taking the deposition of the above-named witness is that he is bound on a voyage to sea.

Yours, etc.,
FRANK and MANSFIELD,
Proctors for Respondents.

San Francisco, September 15th, 1904.

Service of a copy of the within notice admitted this 15 day of Sept., 1904.

PLATT & BAYNE,
Proctors for Libelants. [16]

In the District Court for the United States, in and
for the Northern District of California.

No. 13,310.

DAVID JAMES FLYNN et al.,

Libelants,

vs.

CHARLES SUDDEN et al.,

Respondents.

Deposition of D. W. Nilsson, for Respondents.

BE IT REMEMBERED: That on Saturday, September 17, 1904, pursuant to the notice hereunto annexed, at the office of Messrs. Frank and Mansfield, Room 23, No. 206 Sansome Street, in the city and County of San Francisco, State of California, personally appeared before me, George E. Morse, a United States Commissioner for the Northern District of California, to take acknowledgments of bail and affidavits, etc., D. W. Nilsson, a witness produced on behalf of the respondents in the above-entitled matter.

Nathan H. Frank, Esq., of the firm of Messrs. Frank and Mansfield, appeared as proctor for the respondents, and Horace G. Platt, Esq., of the firm of Messrs. Platt & Bayne, appeared as proctor for the libelants.

And the said witness, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as is hereinafter fully set forth:

(Deposition of D. W. Nilsson.)

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of W. W. Nilsson may be taken *de bene esse* before George E. Morse, Esq., a United States Commissioner for the Northern District of California, and in shorthand by L. Seidenberg. [17]

It is further stipulated that the deposition, when written out, may be read in evidence by either party on the trial of the cause; that all questions as to the mode, time and place of taking the same are waived, and that all objections as to the materiality and competency of the testimony are reserved to both parties.

It is also stipulated that the reading over of the testimony to the witness and the signing thereof is hereby expressly waived.) [18]

D. W. NILSSON, called for the respondents, sworn.

Mr. FRANK.—Q. What is your name?

A. My name is D. W. Nilsson.

Q. Age and occupation? A. Sailor.

Q. Your age? A. 26.

Q. Are you about to proceed on a voyage to sea?

A. Yes, sir.

Q. You are now on board the "Sophie Christensen"? A. Yes, sir.

Q. And you are going off in her when she is unloaded and discharged?

A. So far as I know at present I am going in her. I don't know if there is going to be a change.

Q. You are now on board of her, and she is about to proceed to sea? A. Yes, sir.

(Deposition of D. W. Nilsson.)

Q. Were you a member of the crew of the "Sophie Christensen" when this man, James Flynn, got hurt on board the vessel? A. I was, sir.

Q. What were your duties at that time?

A. I was driving the donkey on board at that time.

Q. The donkey-engine? A. Yes, sir.

Q. The vessel was discharging lumber at the wharf? A. Yes, sir.

Q. How far had she gotten along with her discharging; had the deckload been taken off? [19]

A. Well, there was something on deck, but they were working in hold, too.

Q. At the time of the accident, where was Flynn working?

A. Right abreast of the mizzenmast.

Q. On deck? A. On deck, sir.

Q. What was he doing there?

A. He was going to make a load up, of lumber.

Q. Making up a slingload? A. Yes, sir.

Q. How many slings did you have in operation?

A. Well, there were two men working on each side on deck, and, if I am not mistaken, there were two men down in the hold and were working there.

Q. That is not what I mean. What I want to know is, how many yards did you have, how many booms?

A. There was only one boom, one cargo-gaff.

Q. And that cargo-gaff swung in on board the ship and was made fast to one of these slingloads, and then the sling was raised and it swung out over the

(Deposition of D. W. Nilsson.)

wharf and allowed the load to be discharged on the wharf?

A. The gaff is hanging loose up there; that is a halyard; that is what they call a fall halyard, and is inside close to the mast, and there is a wire hanging from the cross-tree, at the masthead; right down at the end of the gaff—there is a wire runs from the end of the gaff, and at one end is a hook, and the other end was through that gaff, up through in a block and on to the drum on the winch; that is the way it goes there.

Q. Now, this hook at the end of this rope is fastened into the [20] rope that makes the sling, is it?

A. No.

Q. How is it?

A. That hook is spliced into the wire; either so, or an eye is spliced through the hook, which might be a shackle; either way; either the wire is spliced on to the hook, or there might be an eye in the shackle.

Q. I understand that. What I mean is, the hook in the wire comes down, the man on deck takes this hook and puts it into the load, and up she goes, and the sling itself is separate? A. Yes, sir.

Q. How is the sling itself made?

A. The sling is made of rope, and that is spliced in an eye at the end.

Q. And how is it fastened around the lumber?

A. We take one end around the lumber, and the other end we bring it through the first eye and take it up and put the eye on the hook of the donkey-fall.

Q. That is, the rope has an eye at one end. Can

(Deposition of D. W. Nilsson.)

you draw, and show us how it is fastened on the donkey-fall?

(Witness draws on a piece of paper.)

Mr. FRANK.—That is the open sling (indicating). We will mark that "A."

Q. That is the sling before it is put on the load?

A. Yes, sir.

Q. Go on.

A. (After drawing again.) That is as close as I can make it.

Q. "B," then, is the sling when it is around the load of lumber? A. Yes, sir. [21]

Mr. FRANK.—We offer that in evidence and ask that it be marked Respondents' Exhibit "A."

(The drawing is marked Respondents' Exhibit "A.")

Q. Now, as I understand you, No. 1 in this figure "B" on Exhibit "A" is an eye in the end of the sling? A. That is correct, sir.

Q. And the rope that goes around the slingload passes directly through that eye and up to No. 2 where it is caught upon the hook which comes down from the boom-tackle? A. That is correct.

Q. And that is the way the load is raised up?

A. Yes, sir. They always put the sling a little more on one end. If you hoist the load up like that she goes right on up; they always take the sling a little more closely to one end so as to get a chance to hoist it out.

Q. In hoisting up the load, instead of being horizontal, it is at an angle? A. Yes, sir.

(Deposition of D. W. Nilsson.)

Q. At the time of this accident, just state how it happened and what the circumstances were.

A. It was in the morning; we started to work the same as usual, and everything went all right until about 8 o'clock. I was heaving up a load of lumber, and when I got the load up high enough, the gaff was hanging out a little, so she came over the wharf like. While she was hanging so, between the rail and the vessel, something like that (indicating)—

Q. We cannot get that into the record. It was between the rail—

A. Hanging over the rail like.

Q. What happened?

A. And then a few pieces—I don't know how many—six [22] or seven of those short planks fell out, and they fell right between, into the water. Well, the mate was singing out for those people on deck to stand clear.

Q. Did you holler out, too?

A. Not that time; I don't think I did; I might have, but I am not quite sure. Just after a little while those planks that were left, they fell off the sling and fell in the same direction that man was at work. If the three of them, the planks, fell that is more than I remember, because I got kind of excited when I saw the man get hurt. So I don't remember whether those two planks fell down or not, or whether one plank struck him; I can't say anything about that.

Q. How did they strike him?

A. The man was standing with his back to the load,

(Deposition of D. W. Nilsson.)

and the plank just hit him in the back of the head, with the end of the plank.

Q. Do you know whether or not the man had stood clear when the mate called out, and went back again to his work? A. I don't know that.

Q. You do not know? A. I don't know that.

Q. Were you inside of the donkey-house?

A. If that man was away and came back again, that is more than I can tell, because I had my eyes on that load then. So I can't say anything about that, whether he was away or not.

Q. How about those slings? Were those the usual or customary slings used on board vessels?

A. They were, so far as I know.

Q. You have been in the business how long? [23]

A. I have been in there about a year, in the lumber trade. I have been always sailing to the Hawaiian Islands before. I hardly think it was a year I was in the lumber trade when that happened.

Q. There was nothing carried away at that time?

A. Nothing carried away.

Q. The only thing was, that some of the lumber slipped out of the sling?

A. That is all; that is all.

Q. Did you examine this sling? What kind of rope it was; whether it was new rope or old rope?

A. I did not. So far as I remember, I think they were all good slings.

Q. The slings did not break, that you do know?

A. I know they didn't break.

(Deposition of D. W. Nilsson.)

Cross-examination.

Mr. PLATT.—Q. Mr. Nilsson, how long had you been at work on this vessel, the "Sophie Christensen," at that time?

A. That was the second trip I was on her.

Q. What were your duties on the trip?

A. I was donkey-man and sailor.

Q. Had you previously run the donkey-engine in unloading and loading her? A. Yes, sir.

Q. Did you always use the same kind of sling?

A. We used a chain-sling when we took the lumber in.

Q. Why did you use a chain-sling when you took the lumber in?

A. Well, because—I can't tell that; that is the order of the ship. [24]

Q. You don't know why they use the rope? Did you always use a rope-sling when you unloaded the lumber? A. We did.

Q. That was only your second trip? A. Yes, sir.

Q. Therefore, you only unloaded the lumber once before?

A. Yes, sir; and heaved it out, too.

Q. And so that is the only time you unloaded the lumber? A. Yes, sir.

Q. Both times when you loaded, did you use the chain? A. Yes, sir.

Q. How many times was the chain turned around the lumber to make the sling?

A. About two fathoms were fastened to the wire, to the hook, just the same as that wire fall. They

(Deposition of D. W. Nilsson.)

shackled the piece of chain, about a couple of fathoms long, and in the other end of the chain is a hook.

Q. Did the chain go around the lumber once or twice?

A. It went around the lumber once.

Q. Have you ever run the donkey-engine on any other vessel besides the "Sophie Christensen"?

A. That was the first time I drove the donkey.

Q. Had you on any other vessel taken any part in the loading or unloading of lumber? A. No.

Q. Then, had you ever noticed before, on any other vessel, the manner in which they made the sling for loading or unloading the lumber?

A. I can't hardly answer that question. I was around those lumber vessels before I started to sail on the "Sophie Christensen." [25]

Q. Then you don't remember whether they made the slings in any other way or not?

A. I think rope is used on all vessels when discharging vessels.

Q. I want to know what you know, not what you think. Do you remember now having paid any particular attention to the way in which they made rope slings on any other vessel than the "Sophie Christensen"?

A. I can't tell on any other vessels, when I haven't been in them.

Q. Had you been in the lumber trade on any other vessel beside the "Sophie Christensen"?

A. No, sir.

Q. What sort of vessels have you been on before?

(Deposition of D. W. Nilsson.)

A. I went sailing down to the Islands in traders, in the trade between the Islands and San Francisco.

Q. What sort of vessels were those?

A. They were squared rigged; they went down with a general cargo and came up with sugar.

Q. Did you have anything to do with making slings on those vessels?

A. We were making up loads while down at the Islands.

Q. You don't know how they made the slings?

A. There were double slings.

Q. That is, the rope went around the load twice.

A. There was no lumber; there were sacks and hay and barrels and those things.

Q. And on those things the rope went around twice, instead of once.

A. The slings were differently made altogether?

[26]

Q. Suppose you take a piece of paper, and show us how they made the slings on those vessels.

A. (After drawing on paper.) That is supposed to be sacks there, or something.

Q. That is the way the sling is when you load sacks?

A. Those parts (*indication*) ought to be a little wider out.

Q. That is the parts of the sling have to be wider apart?

A. That is, one there, and that one there.

Mr. PLATT.—Mr. Reporter, by "that one there" he means that the two ropes of the sling, instead of

(Deposition of D. W. Nilsson.)

being as he has drawn them, are where letters "a" and "b" are marked. I offer this in evidence as Libelants' Exhibit "A."

(The drawing is marked Libelants' Exhibit "A.")

Q. Then that is the usual sling, the one you have drawn and which is marked Libelants' Exhibit "A"; that is the one you had used before you had gone on the lumber schooner?

A. Yes, sir. They have those slings on lumber schooners when taking on loads of such things.

Q. Then you have the double slings shown in Libelants' Exhibit "A"; you have that double sling on the "Sophie Christensen"?

A. There is such a sling on board all right.

Q. Did you ever see it used?

A. When they are taking laths and shingles out they use double slings.

Q. Why do they use double slings in taking laths and shingles out?

A. I think they used single slings, too, if I am not mistaken, when we were taking shingles out.

Q. For laths and for shingles?

A. Shingles I think we took out. [27]

Q. Were you using the double sling when Flynn was hurt? A. No, sir.

Q. When you state that the single sling is usually used in the lumber trade, you mean it is the usual one used on the "Sophie Christensen." You never saw one used on any other lumber vessel? A. Yes, sir.

A. Your previous experience in unloading vessels

(Deposition of D. W. Nilsson.)

has been on vessels carrying other merchandise than lumber? A. Yes, sir.

Q. And they used the double sling? A. Yes, sir.

Q. Now, from your observation on unloading lumber, if there had been a double sling around this load of lumber would the planks have fallen out?

A. There wouldn't be a bit of difference.

Q. You see no advantage in two ropes around a load of lumber, over one rope?

A. That is just the same as one rope.

Q. But there are two ropes around the sacks and they are spread out?

A. They are not spread out in using the double sling for lumber.

Q. You never saw them use a double sling for lumber? A. No, sir.

Q. When they use a double sling for sacks they spread them out, do they not? A. Yes, sir.

Q. How do you know they use them together on lumber, if you never saw it done?

A. That is the same thing as a single one, because they don't spread them out.

Q. Why do they spread them out on sacks?

A. Sacks are not as long as that and they have to spread them out, [28] and if they used one rope around the sacks it would not spread.

Q. Why not use one rope in discharging sacks?

A. Because I don't think one rope would do in discharging sacks.

Q. Why not?

A. Because the load would go out on either side.

(Deposition of D. W. Nilsson.)

Q. Why would not lumber go out on either side?

A. I don't understand, but in my opinion it is just as good.

Q. You can give no reason? A. No, sir.

Q. How do you explain this lumber falling out of this sling? A. It滑ed out.

Q. Would it not be more difficult to slide out if two ropes were used instead of one?

A. No difference, in my opinion.

Q. Why not, if the two ropes were spread out around the load of lumber?

A. But those two parts are close together.

Q. But I am asking you, if they were spread out, like you described they were on the sacks, would not that be safer?

A. No, not that way, but I think one thing, if you got a double sling or single sling, it is proper to take a round turn.

Q. It would be safer? A. Yes, sir.

Q. If you used two ropes, with a round turn, it would be safer than one?

A. No, one is as safe as two.

Q. Then I ask you why they spread out the ropes on sacks? A. That is a different load.

Q. They are loads just the same; you are lifting material up to leave on the wharf?

A. No, but you are not slinging loads of lumber; so that both ends go up even.

Q. If you were slinging a load of laths, you would spread the ropes out?

(Deposition of D. W. Nilsson.)

A. It is necessary to spread them out when laths are taken out. [29]

Q. Will you explain why it is necessary to spread out the ropes in lifting sacks and not in lifting lumber?

A. I say, if a man had a double sling of lumber, the rope is close together, anyway, the same as a single one.

Q. You told me you never saw them use a double sling for lumber. How can you say that?

A. That is my belief.

Q. You never saw it done with a double sling?

A. No. We might use a double sling on the "Sophie Christensen," but I can't say that.

Q. Therefore, you cannot say that if they use a double sling, they will be close together?

A. My opinion would be it would be close.

Q. That is your opinion. You do not know it would be? A. No.

Q. Can you explain why these boards, whatever you had, fell out of this sling?

A. I can't very well say how it was, but they fell out; I know that; the reason why, I don't know.

Q. You say when they fell, this man Flynn had his back to the load? A. That is true.

Q. And they fell and struck him before he saw them? A. Yes, sir.

Q. You were around the engine at the time?

A. I was, sir.

Q. Was anybody else working with Flynn?

A. One of the sailors.

(Deposition of D. W. Nilsson.)

Q. What is his name?

A. Nils Soderquist, if I am not mistaken.

Q. He was not struck, was he?

A. I think the plank滑ed along his arm, I think; that is all he said about it.

Q. You say that first some six or seven planks fell, and they fell into the water, and then the others followed? [30]

A. They were hanging still for a minute or two; they didn't fall out at the same time as the short pieces.

Q. Had you seen any loads like that fall out before?

A. Not like that; single pieces might drop out sometimes; but not a full load like that.

Q. Single pieces might fall out?

A. When we got all kinds of lumber in the sling, there might be some loose pieces in the center of the load, and there might be some pieces dropping out, and that might happen all right.

Q. Suppose you were to make a sling long enough to take a double rope around the load, instead of just one, would not that be apt to hold the lumber more tightly and securely in the sling than if you had but one rope around it?

A. That might be all right; that might be safer, but at the same time—

Q. Never mind that. You say it would be safer?

A. Oh, yes; I believe they wouldn't slip exactly so easy.

Mr. FRANK.—Now, make your explanation; fin-

(Deposition of D. W. Nilsson.)

ish your answer. You said, "But at the same time."

A. Even so, if they take a round turn, there is some lumber dropping out anyway.

Mr. PLATT.—Q. It would be safer?

A. I think it would be a little safer, all right.

Redirect Examination.

Mr. FRANK.—Q. Now, Mr. Nilsson, I understand you to say that in discharging sacks of sugar, the sacks have to go straight up?

A. That is what they have, or else fall out.

Q. They have a short load and a high load?

A. Twelve or fifteen bags.

Q. One on top of the other. The lumber has to go up slantingly, [31] and if it did not you could not get it out of the hold, and therefore you have to have the spread slings for the sacks to get them up straight, and to get the lumber out of the hold—

A. They be exactly in one place.

Q. Otherwise you could not raise your lumber properly to get it out of the hold. That is right?

A. Yes, sir; even so, if you should spread your slings, it wouldn't make any difference; the lumber is to one side, anyway.

Q. It is the slanting of the load that makes it slip out? A. Dangerous to slip out.

Q. I understand you to say that happens right along?

A. Sometimes one piece might be a little bigger than another; it goes up like that (indicating a slanting position), and it slides out.

(Deposition of D. W. Nilsson.)

Q. The people working there expect a load to slip out sometimes?

A. When some pieces fall out, they can easily see it is a dangerous load.

Q. I mean the people in the habit of discharging cargoes know it is likely to happen; expect that?

A. Whenever they see a piece of lumber drop out, they stand clear.

Q. Whenever they make up a slingload, and the load is being started to raise, is it not the business of those people to stand clear immediately?

A. That's what it is.

Q. And if a man is working on one load and knows another is being slung up, it is his business to stand clear? A. Yes, sir.

Recross-examination.

Mr. PLATT.—Q. Do you mean to say when a man is fixing his load, he expects it to fall?

A. No, sir, sure not. He understands when a load is going up, [32] and if they see anything fall out, they should stand clear.

Q. Then, in answering Mr. Frank, you mean to say that if a load is going up and a man sees a piece fall out, he is expected to stand clear?

A. I understand him to say that.

Q. You did not mean to say that the man who is fixing the sling is expected to stand clear; he is not expected to stand clear unless he sees a piece fall out?

A. When a man makes up a load, he is making it the best he can, not to slip out.

(Deposition of D. W. Nilsson.)

Q. And if he had to stand clear while one load left until it got on the wharf, he would have to quit work until it is done?

A. If he sees it is a dangerous load.

Q. But if he does not see it is a dangerous load, he is expected to go on working, making up another load? A. Yes, sir.

Q. He is working where the lumber is?

A. Yes, the spot where the load is going up there; he has to be there all the time.

Q. He is not excepted to stand clear, and does not stand clear, unless he sees it is a dangerous load?

A. The mate has his eye on the load, and when he sees anything wrong, he sings out.

Q. It is the duty of the mate, then, to watch the load and sing out if there is any danger.

A. Yes, sir; he did watch it. He watches every load that goes out, and takes hold of the load and swings it over the rail.

Q. It is the duty of the mate to watch it and warn them of any danger? A. Yes, sir.

Q. You say that in order to get lumber out of the hold, you have to fix the sling a little nearer to one end, so that the load goes up slanting?

A. Yes, sir. [33]

Q. You could do the same thing with two ropes, fastened to one side, could you not? A. Yes, sir.

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I, George E. Morse, a United States Commissioner

for the Northern District of California, do hereby certify:

That the reason for taking the foregoing deposition, and the fact is, that the testimony of the witness, D. W. Nilsson, is material and necessary in the cause in the caption of the said deposition named, and that he is bound on a voyage to sea, and more than one hundred miles from the place of trial before the time of trial.

I further certify that on Saturday, the 17th day of September, in the year one thousand nine hundred and four, at 11:15 o'clock A. M. of said day, I was attended by H. G. Platt, Esq., proctor for the libelants, and Nathan H. Frank, Esq., proctor for the respondents, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth; that said deposition was, pursuant to the stipulation of the proctors for the respective parties hereto, taken in shorthand by L. Seidenberg, and afterwards reduced to typewriting; that the reading over and signing of the said deposition by the witness was, by the aforesaid stipulation, expressly waived.

Accompanying the deposition and annexed thereto and forming a part thereof are Respondents' Exhibit "A" and Libelants' Exhibit "A," introduced in connection therewith and referred to and specified therein.

I further certify that I have retained the said deposition [34] in my possession for the purpose of

delivering the same with my own hand to the United States District Court for the Northern District of California, the Court for which the same was taken.

And I further certify that I am not of counsel, nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

IN TESTIMONY WHEREOF, I have hereunto
subscribed my hand and affixed my seal of office, at
my office in the City and County of San Francisco,
State of California, this 23d day of September, 1904.

[Seal] GEO. E. MORSE,
United States Commissioner, Northern District of
California, at San Francisco.

[Endorsed]: Filed Sept. 23, 1904. George E. Morse, Clerk. By John Fouga, Deputy Clerk. [35]

UNITED STATES OF AMERICA.

District Court of the United States, Northern District of California.

IN ADMIRALTY.

DAVID JAMES FLYNN et al.

Libelants.

vs.

CHARLES E. SUDDEN et al.

Claimants.

Notice of Taking Deposition of George T. Cainan.

To Messrs. Frank & Mansfield, Proctors for Claimants.

You are hereby notified that George Cainan will be

examined, *de bene esse*, in the above-entitled cause, on behalf of the libelants before James P. Brown, Esquire, United States Commissioner for the Northern District of California, at San Francisco, on the 18th day of July, A. D. 1905, at 9:30 A. M., at the office of Messrs. Andros & Hengstler, room No. 6, in the building situated on the northeast corner of Sansome and Halleck Streets, and number 320 on Sansome Street, in the city of San Francisco, in the District aforesaid; and you are hereby further notified to then and there appear and propound such questions to said witness as you may deem fit.

The cause for taking the deposition of the above-named witness is that he is bound on a voyage to sea.

Yours etc.,

ANDROS & HENGSTLER,

Proctors for Libelants.

San Francisco, July 17, 1905.

Service of a copy of the within notice admitted this 17th day of July, 1905.

FRANK and MANSFIELD,

Proctors for Claimants. [36]

In the District Court of the United States, in and for the Northern District of California.

No. 13,310—IN ADMIRALTY.

DAVID JAMES FLYNN et al.,

Libelants,

vs.

CHARLES E. SUDDEN et al.,

Claimants.

Deposition of George T. Cainan, for Libelants.

BE IT REMEMBERED: That on Tuesday, July 18, 1905, pursuant to the notice hereunto annexed, at the office of Messrs. Andros & Hengstler, Room No. 6, 320 Sansome Street, in the City and County of San Francisco, State of California, personally appeared before me, James P. Brown, a United States Commissioner for the Northern District of California, to take acknowledgments of bail and affidavits, etc., George Thomas Cainan, a witness produced on behalf of the libelants in the above-entitled matter.

L. T. Hengstler, Esq., of the firm of Messrs. Andros & Hengstler, appeared as proctor for the libelants, and Nathan H. Frank, Esq., of the firm of Messrs. Frank & Mansfield, appeared as proctor for the claimants.

And the said witness, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as is hereinafter fully set forth. [37]

(It is hereby stipulated that the testimony of George Thomas Cainan may be taken in shorthand by Louis Seidenberg, and thereafter written out, and the reading over and signing of said testimony by the witness is hereby waived. All other rights under the notice for taking said deposition are reserved.)

ANDROS & HENGSTLER,
Proctors for Libelants.

FRANK and MANSFIELD,
Proctors for Claimants. [38]

(Deposition of George Thomas Cainan.)

GEORGE THOMAS CAINAN, called for the libelants, sworn.

Mr. HENGSTLER.—Q. 1. What is your name, age and occupation?

A. George Thomas Cainan.

Q. 2. How old are you? A. Twenty-four.

Q. 3. What is your occupation. A. Seaman.

Q. 4. Are you engaged on any vessel at the present time? A. No, sir.

Q. 5. Are you looking for a ship? A. Yes, sir.

Q. 6. To go to sea? A. Yes, sir.

Q. 7. Do you intend to go to sea as soon as you find one? A. Yes, sir.

Q. 8. Where were you in August, 1903, Mr. Cainan?

A. On board the schooner "Sophie Christenson."

Q. 9. You remember any particular event that happened during that month aboard that schooner?

A. Yes, sir.

Q. 10. What was it? Just state generally.

A. About the accident, it is?

Q. 11. Yes. On what day did the accident happen on board that schooner? A. On the 3d of August.

Q. 12. Where was the schooner at that time?

A. Along the San Pedro Lumber Company's wharf.

Q. 13. What work, if any, was going on on the deck of the schooner? A. She was discharging lumber.

Q. 14. How many men were engaged in discharging lumber on deck? A. Six.

Q. 15. Was the lumber being discharged from the

(Deposition of George Thomas Cainan.)
hold or from the deck, if you remember?

A. From the deck, sir.

Q. 16. Were there any men engaged in the work
on the wharf? A. On the wharf?

Q. 17. Yes.

A. Not belonging to the ship; they belonged to the
lumber company. [39]

Q. 18. But they were helping in discharging, were
they? A. Yes, sir.

Q. 19. How many of them?

A. I couldn't tell you exactly how many there
were.

Q. 20. What were the men on deck doing?

A. Making slingloads.

Q. 21. And how many of them were engaged in
that? A. Six, sir.

Q. 22. Were there any, besides the men making
slingloads on the deck, doing any discharging?

A. There was this Mr. Flynn.

Q. 23. No, besides the six you stated.

A. No, sir, besides the mate giving orders.

Q. 24. The mate was giving orders?

A. Yes, sir.

Q. 25. Where was he?

A. Standing about midships.

Q. 26. Was there anybody else on board at that
time?

A. No, there was only the particular crew.

Q. 27. How was the unloading of the lumber done?

A. It was done by the aid of the steam donkey and
gaff, single wire.

(Deposition of George Thomas Cainan.)

Q. 28. Who was running the steam donkey?

A. It was a man by the name of Nilsson.

Q. 29. Was he included in the six men on deck?

A. No, sir.

Q. 30. How many gaffs were used in discharging?

A. One, sir.

Q. 31. Whereabouts was that gaff located?

A. It was resting on the main mast, sir.

Q. 32. Resting on the main mast? A. Yes, sir.

Q. 33. And was it fast there, or movable?

A. It was what we call a throat halyard, and a pendant attached to the end of it.

Q. 34. Was it movable?

A. Yes, sir, it was movable.

Q. 35. In what way did it move?

A. How do you mean—how it is movable?

Q. 36. The gaff.

A. We hoisted it to the place we wanted it. [40]

Q. 37. And then?

A. The donkey-fall rose from the blocks at the masthead.

Q. 38. Go on; describe the operation.

A. And rove through the sheath in the gaff.

Q. 39. What did you first do with the lumber that was lying on the deck, in order to move it out of the ship? A. We first made it up in slingloads.

Q. 40. How many men were engaged in doing that?

A. Six, sir.

Q. 41. I mean in making up one slingload.

A. Two, sir.

Q. 42. Do you know who made up the slingload—

(Deposition of George Thomas Cainan.)

A. It was I.

Q. 43. (Continuing.) —in the particular case when the accident happened.

A. It was I and the man named Elliot.

Q. 4. Do you know how to spell his name?

A. E-l-l-i-o-t.

Q. 45. How did you make up that slingload—what did you do?

A. Well, I was on one end of the plank, and this man Elliot at the other, piling it up on each other.

Q. 46. What did you do then?

A. Well, we went and saw these slings—rope slings lying on the deck, what we were supposed to take and put around the lumber.

Q. 47. Did you put it around the lumber?

A. Yes, sir.

Q. 48. In what way?

A. We put it a little to one end on the single turn.

Q. 49. After you had given that single turn, what was done?

A. We put one eye in through the other eye. There were two eyes, one on each end.

Q. 50. Of the rope? A. Yes, sir.

Q. 51. And then?

A. When our turn comes for sending up a load we hook on a sling to the hook of the fall—the donkey-fall.

Q. 52. Then?

A. Then the order was given to the donkey-man, a [41] whistle, to go ahead.

Q. 53. Who gave that order? A. The mate, sir.

(Deposition of George Thomas Cainan.)

Q. 54. Go ahead; describe the rest of the operation.

A. We were all told to get out of the way, of course, when the lumber was going to swing right across the ship.

Q. 55. Go right ahead and tell us what happened after that.

A. The lumber was still going up and shaking back and forth, as they do; no guide at all attached to it; going up it was high enough and came back, and the mate sang out to come back.

Q. 56. What was done then?

A. It struck the stringer of the wharf.

Q. 57. What does "come back" mean in that case?

A. "Come back" is to lower away.

Q. 58. After the load struck the stringer of the wharf, what happened then?

A. It shook the load, and some pieces fell down between the ship and the wharf, and the remaining three pieces swung aboard, and one piece struck this man Flynn.

Q. 59. Where did it strike him?

A. Right on the head, sir.

Q. 60. Did you see the plank strike him?

A. Yes, sir.

Q. 61. What was Mr. Flynn's position at the time, and what was he doing when the plank struck him?

A. He was just lifting a big piece of timber so as for another man to put the block under the piece of timber so as to allow the sling to go underneath.

Q. 62. He was making up a new slingload, was he?

(Deposition of George Thomas Cainan.)

A. Yes, sir.

Q. 63. Whereabouts on the deck was he at that time?

A. Well, he was more near to the mizzenmast.

Q. 64. Near to the mizzenmast, and between what masts? A. The main and the mizzen.

Q. 65. If I understand you, the gaff was swung between the main and mizzen masts, was it?

A. Yes, sir. [42]

Q. 66. The loose end toward the mizzen?

A. Towards aft—the mizzen.

Q. 67. Whereabouts was the donkey-engine located on deck? A. Between the fore and main masts.

Q. 68. And where were you standing when the accident happened?

A. On the starboard side of the ship.

Q. 69. Which side of the ship was lying along the wharf? A. The port side.

Q. 70. What was the height of the deck, with reference to the height of the wharf?

A. Between, you mean?

Q. 71. Yes—which was higher?

A. The wharf, sir.

Q. 72. The wharf was higher? A. Yes, sir.

Q. 73. What was the position of the deck, with reference to being even—horizontal or otherwise?

A. The difference in measurement, you mean?

Q. 74. No; with reference to lying in the same way as the wharf or otherwise—was the deck of the vessel the same way as the wharf?

A. Yes, sir; horizontal.

(Deposition of George Thomas Cainan.)

Q. 75. Horizontal?

A. It had a very little list to port.

Q. 76. What was the effect of that list to port, if any, if you know?

A. Well, that is to allow the lumber to go off to the wharf.

Q. 77. To swing out towards the wharf?

A. To swing out towards the wharf.

Q. 78. Was there any mechanical contrivance or any machinery used for the purpose of making the lumber swing off towards the wharf?

A. No, sir; just the list.

Q. 79. Did anybody help to make the lumber swing out towards the wharf?

A. Very often; if the mate can touch the end of it, he generally guides it out towards the wharf.

Q. 80. Was there any contrivance on the ship for the purpose of preventing the load from swinging back on the deck after it had [43] once swung out?

A. No, sir, no prevention; nothing to prevent it from swinging back.

Q. 81.—With regard to the rope which you put around the load, the particular load that struck Mr. Flynn: Was that, in your opinion, sufficient and safe for the purpose for which it was used?

Mr. FRANK.—I object to that as leading.

Mr. HENGSTLER.—Q. 82. What is your opinion with regard to its safety?

A. My opinion is that the sling was very short, although it was a new piece of rope; it was not long

(Deposition of George Thomas Cainan.)

enough to get a round turn; that means two round turns.

Q. 83. Was it long enough to go around once entirely?

Mr. FRANK.—I object to that as leading.

A. Just one turn of the rope through the eye.

Mr. HENGSTLER.—Q. 84. You call that a round turn? A. That is a single turn, we call it.

Q. 85. You say it was not long enough to make a round turn? A. No, sir.

Q. 86. Had you spoken to anybody about this rope before the accident happened?

Mr. FRANK.—I object to that as leading.

A. Yes, sir.

Mr. FRANK.—I object also to it on the ground that it is immaterial whether this man spoke to anybody or not. We are not bound by anything this man has said in the matter.

A. (Continuing.) We spoke on account of our own safety.

Mr. FRANK.—I move to strike that out as not responsive, and also on the ground that he is not a party to the suit.

Mr. HENGSTLER.—Q. 87. To whom did you speak about it?

A. I spoke to the mate about it, and so did the other men.

Q. 88. Had you experience on lumber vessels before that?

Mr. FRANK.—I object to that as leading, and also

(Deposition of George Thomas Cainan.)

as not [44] proving the nature of the experience of the man.

Mr. HENGSTLER.—Q. 89. What was your experience?

A. My experience was on the coast as seaman, and working with different apparatus.

Q. 90. What apparatus had you been used to in working in loading and unloading lumber on vessels?

A. The same kind of gaff.

Q. 91. With reference to slings, what kind of slings? A. Chain slings—either wire or chain.

Q. 92. Is that the general custom, to use wire or chain slings for the purpose of loading and unloading lumber?

Mr. FRANK.—I object to that, in the first place, on the ground that it is leading; and, in the second place, the witness has not been proved to be an expert, so as to prove what the custom is.

Mr. HENGSTLER.—Q. 93. How long have you been working on lumber vessels, Mr. Cainan?

A. Since 1901, sir.

Q. 94. What is your opinion with regard to the safety of ropes being used for the purpose of hoisting lumber?

Mr. FRANK.—I object to the witness' opinion, as not competent evidence on the subject.

A. Rope is apt to give way under it. The chafing and the corners of the lumber, and the shaking about of the load, will soon wear away the rope sling.

Mr. HENGSTLER.—Q. 95. Has the newness of

(Deposition of George Thomas Cainan.)
the rope any effect on the probability of its giving way? A. Yes, sir.

Mr. FRANK.—I object to that as leading.

Mr. HENGSTLER.—Q. 96. What effect has it?

A. The new rope has always more or less oil in it, and is more slippery.

Q. 97. What contrivances have you found in other lumber vessels [45] that you have been engaged in, for the purpose of steadyng a load after it is swung out over the wharf?

Mr. FRANK.—I object to that as incompetent and immaterial.

A. Well, all the vessels I have been in after that time had what we call a Spanish burton.

Mr. HENGSTLER.—Q. 98. What is the purpose of such an apparatus?

A. Well, it is to keep the load above the wharf.

Q. 99. You say this vessel had no Spanish burton?

A. No, sir.

Q. 100. Nor any other contrivance of that kind?

A. No, sir.

Q. 101. Did the unloading of this vessel go on for some time after the accident?

A. Yes, sir, it went on in the same way.

Q. 102. What kind of slings were used after the accident, for the purpose of making up the loads?

Mr. FRANK.—I object to that as incompetent and immaterial.

A. The same slings were used that day. The day after we used the chain.

Mr. HENGSTLER.—Q. 103. Did you see the

(Deposition of George Thomas Cainan.)

captain at the time of the accident on board or in the neighborhood? A. Did I see what?

Q. 104. Did you see the captain of the schooner?

A. The captain at the present time was in the cabin.

Mr. FRANK.—I move to strike that out as not responsive.

Mr. HENGSTLER.—Q. 105. That means you did not see him.

A. I did not see him until a couple of minutes after the accident occurred.

Mr. FRANK.—I object to that—to counsel testifying for the witness.

Mr. HENGSTLER.—Q. 106. Now, Mr. Cainan, I want you to tell here, because I want it in the record, what happened yesterday afternoon, with reference to your giving testimony in this case.

A. This gentleman over there (pointing to Mr. E. A. Christenson)—I don't know exactly what is his name—

Mr. HENGSTLER.—(Addressing Mr. Christenson.) Please be kind [46] enough to give us your name.

Mr. CHRISTENSON.—E. A. Christenson.

A. (Continuing.) —inquired for me at the Seamen's Union Hall, and asked if he couldn't have a talk with me. Well, I had a friend, and I had to go with him to a certain place, so I asked Mr. Christenson if I couldn't come up to his office, or some other place, to talk to him. I said I promised I would be up there about 3 o'clock. So I was busy

(Deposition of George Thomas Cainan.)

with a shipmate of mine, and I forgot all about it until it was too late.

Mr. HENGSTLER.—Q. 107. Did you come to see me in my office afterwards?

A. I came to see you about it.

Q. 108. What for?

A. Just to see if it is necessary—this Mr. Christenson gave me a piece of paper, too, with his address, to call at his place.

Q. 109. With his address? A. Yes, sir.

Q. 110. And he asked you to go to that address?

A. Yes, sir.

Q. 111. Did you go?

A. No, sir, because I had my shipmate waiting outside there all the time.

Q. 112. What time was that—what time did he come to see you at the Sailors' Union?

A. It was after 12.

Q. 113. What did Mr. Christenson say to you at that time?

A. Well, he didn't say anything very particular, only that he wants to have a talk about the accident; simply a talk about the accident.

Cross-examination.

Mr. FRANK.—XQ. 1. Did you go up then to see Mr. Hengstler? A. Yes, sir.

XQ. 2. And your friends? A. Yes, sir.

XQ. 3. Why did you come to Mr. Hengstler?

A. Well,—

Mr. HENGSTLER.—I will tell you why he came—

Mr. FRANK.—I do not want your answer, and I

(Deposition of George Thomas Cainan.)
object to your [47] prompting the witness.

Mr. HENGSTLER.—You know it was an act of the greatest impropriety to approach the witness.

Mr. FRANK.—It was certainly not. You do not own the witness. If you do, I want to find it out. I insist on your not prompting the witness.

Mr. HENGSTLER.—It was detestable practice to approach this witness after he was my witness.

Mr. FRANK.—Are you done?

Mr. HENGSTLER.—Yes.

Mr. FRANK.—(Addressing the witness.) Now, answer the question.

Mr. HENGSTLER.—Just tell him.

Mr. FRANK.—XQ. 4. Why did you come to Mr. Hengstler?

A. I wanted to know what was up, what was going to be; what business I had to go up there.

XQ. 5. What business did you have to come here?

A. It was on my way going up town.

XQ. 6. How did you happen to come here in the first place?

Mr. HENGSTLER.—I object to this question because it is obvious, and ought to be obvious to every attorney, that the witness would naturally come to the attorney whose witness he is when he is approached by the other side in an improper way.

Mr. FRANK.—He was not approached in an improper way, and I object to that statement.

Mr. HENGSTLER.—I do not say that you approached him.

(Deposition of George Thomas Cainan.)

Mr. FRANK.—He was not approached in an improper way.

Mr. HENGSTLER.—I say it is improper to approach witnesses on the other side.

Mr. FRANK.—That may be your opinion. You may think you own the witness.

Mr. HENGSTLER.—I think it is unprofessional.

Mr. FRANK.—It is a good thing that your opinion is not the opinion of the profession, generally. I did not come over here to [48] have a discussion of this kind. I came over here to take this deposition, and I want to take it properly. (Addressing the witness.) Just answer that question, Mr. Witness. (Addressing the Reporter.) Just read the last question.

(The Reporter reads the last question.)

A. How did I happen to come here in the first place?

XQ. 7. Yes.

A. Well, I came here to explain the accident.

XQ. 8. Who brought you here?

A. In the first place, Mrs. Flynn brought me here.

XQ. 9. Mrs. Flynn brought you here?

A. Yes, sir, Mrs. Flynn. It was about the accident.

XQ. 10. When was that?

A. Last Saturday.

XQ. 11. When you came to Mr. Hengstler yesterday about this matter and told him Mr. Christenson had spoken to you about it, what did you say to him? Cannot you answer that question? What is the mat-

(Deposition of George Thomas Cainan.)
ter—why can't you answer the question?

A. I came to see if I—

XQ. 12. (Interrupting.) I did not ask you what you came to see, but what you said to him.

Mr. HENGSTLER.—Tell him what you said about it.

A. I asked him what I ought to do, if I ought to go up to that Christenson office.

Mr. FRANK.—XQ. 13. What did he say to you?

A. He says, "You can do just as you please." I thought myself it is a little too far out of my way, so I went up town. That is the long and short of it.

XQ. 14. That is all there is to it? A. Yes, sir.

XQ. 15. Did you ever speak to anybody about this case before? A. Speak to anybody?

XQ. 16. Yes.

A. I spoke to Mrs. Flynn and told her I was a witness of the accident.

XQ. 17. When?

A. That was about six weeks ago.

XQ. 18. Was that the first time you spoke to her about it? [49]

XQ. 19. The first time you spoke to anybody about it? A. Yes, sir.

XQ. 20. Since then you paid no attention to it?

A. I have been to sea since then.

XQ. 21. Where have you been to sea?

A. Gray's Harbor.

XQ. 22. When did you leave the 'Sophie Christensen'? A. I left her on the trip after that.

XQ. 23. The trip after? A. Yes, sir.

(Deposition of George Thomas Cainan.)

XQ. 24. What vessel did you go on then?

A. I went on the schooner "Sehome."

XQ. 25. Where did you go?

A. Everett, Puget Sound.

XQ. 26. In what trade?

A. In the lumber trade.

XQ. 27. How long did you stay with her?

A. About two months and five days.

XQ. 28. Where did she go?

A. She went down to San Pedro.

XQ. 29. With a cargo of lumber?

A. Yes, sir. .

XQ. 30. Did she discharge the cargo down there?

A. Yes, sir.

XQ. 31. From her, what vessel did you go to?

A. The schooner "Honoipu."

XQ. 32. Where did you go on her?

A. Puget Sound.

XQ. 33. From Puget Sound to where?

A. I left here there.

XQ. 34. Where did you go on board of her?

A. I went on board of her at San Pedro.

XQ. 35. She went up empty?

A. She went light.

XQ. 36. You did not handle any cargo?

A. No, sir.

XQ. 37. What vessel did you go on then?

A. The schooner "Muriel."

XQ. 38. Where did you go on her?

A. To San Francisco.

XQ. 39. Cargo? A. Lumber.

(Deposition of George Thomas Cainan.)

XQ. 40. Did she discharge her cargo in San Francisco? A. Yes, sir. [50]

XQ. 41. What was the date of that, do you know? A. The date I couldn't tell you.

XQ. 42. Cannot you come near it? A. Last May—May a twelve month.

XQ. 43. What vessel did you go on after that?

A. I went back to Gray's Harbor in the "Muriel," and joined the schooner "Watson E. West," bound for South Africa.

XQ. 44. With a cargo of lumber?

A. Cargo of lumber.

XQ. 45. Did you discharge the lumber down there? A. Yes, sir.

XQ. 46. Right alongside of the wharf?

A. Alongside of the wharf.

XQ. 47. How long did you stay with her?

A. Ten months and nine days.

XQ. 48. Where did you leave her?

A. I left her in Aberdeen. I made the round trip.

XQ. 49. What vessel were you on then?

A. The schooner "Alumna."

XQ. 50. Where did you go then?

A. To San Francisco.

XQ. 51. With a cargo of lumber?

A. Cargo of lumber.

XQ. 52. Where did you discharge that?

A. We were paid off as soon as we came here.

XQ. 53. You did not discharge here?

A. No, sir.

XQ. 54. What vessel were you in next?

(Deposition of George Thomas Cainan.)

A. The "Charles A. Folk."

XQ. 55. Where did you go in her?

A. To Gray's Harbor.

XQ. 56. Did you come here from Gray's Harbor?

A. Yes, sir.

XQ. 57. Did you come back in her?

A. No, sir. I came back in the "Vidette."

XQ. 58. With a load of lumber? A. Lumber.

XQ. 59. Did you discharge it here?

A. Discharged it here.

XQ. 60. How long did you stay in her?

A. Twenty-seven days.

XQ. 61. You say twenty-seven days?

A. I say about twenty-seven days. [51]

QX. 62. You did not make another trip in her?

A. No, sir.

XQ. 63. What vessel did you go in next?

A. I am still here. I just left the bark "Vidette."

XQ. 64. Did you discharge lumber from the "Vidette"? A. Yes, sir. I was donkey-driver.

XQ. 65. Who owns the "Vidette"?

A. The Union Lumber Co.

XQ. 66. What kind of slings did you use on the "Vidette"? A. Chain slings.

XQ. 67. To discharge with? A. Yes, sir.

XQ. 68. Are you positive of that? A. Yes, sir.

XQ. 69. How long had you been discharging the "Sophie Christenson" before this accident happened? A. A day.

XQ. 70. A whole day?

(Deposition of George Thomas Cainan.)

A. No, not exactly a whole day; short of a couple of hours.

XQ. 71. And this happened late in the afternoon?

A. No; early in the morning.

XQ. 72. Of the second day?

A. The second day.

XQ. 73. There were three sets of men at work making up slingloads?

A. Three sets of men.

XQ. 74. Where were they located—where were they discharging from?

A. Two on the starboard side, and four on the port side.

XQ. 75. You were one of the four on the port side?

A. No; I was one of the two on the starboard side.

XQ. 76. You were on the starboard side?

A. Yes, sir.

XQ. 77. The other four were on the port side, on the side lying towards the wharf? A. Yes, sir.

XQ. 78. Every time you made up a load, the mate sang out to stand clear, did he not? A. Yes, sir.

XQ. 79. And he did it on this occasion when the sling went across, did he not?

A. He did when the sling went across.

XQ. 80. When you made up this slingload, where did you go to get your sling from?

A. Amidships.

XQ. 81. You picked it out yourself?

A. Picked it out myself. [52]

XQ. 82. And made up the load with such sizes as you saw fit to fill that sling? A. Exactly.

(Deposition of George Thomas Cainan.)

XQ. 83. When was it you say you spoke to some one about the sling?

A. I suppose about as soon as we started to work.

XQ. 84. Whom did you speak to?

A. I spoke to the mate about it.

XQ. 85. To no one else?

A. No, sir, to no one else.

XQ. 86. Now, every time a load came over, I understand you to say the mate, when he could reach it, guided it on the wharf? A. Yes, sir.

XQ. 87. That is, it would hang down at one end lower than the other, and he would reach his hand over and pass it over to the wharf?

A. The wharf was too high and the lumber was hoisted high enough to clear the wharf.

XQ. 88. He passed it over in that way, did he not, by holding onto one end of it?

A. He didn't touch it that time; he couldn't.

XQ. 89. He did not touch this particular load?

A. No, sir.

XQ. 90. He had been touching all the others?

A. That is, if he could touch them. That was when the high tide was.

XQ. 91. The load, I suppose, swung across slowly. It did not swing across fast, did it?

A. No, it didn't swing very fast.

XQ. 92. With regard to this Spanish burton, that is something that any sailor man can rig up, can he not? A. Yes, sir.

XQ. 93. It is just a system of ropes that the sailors, when they are discharging, if they want to

(Deposition of George Thomas Cainan.)

use a Spanish burton, rig it up and use it. If they do not want to use it, they do not, that is all?

A. Yes, sir.

XQ. 94. What I mean is, it is not like the mast or any permanent part of the ship; it is just some ropes. Whenever they want to use it, they take these ropes and make a Spanish burton, and if they do not want to use it they do not.

A. We do as the mate orders.

XQ. 95. Answer my question: You do that—when you want to use [53] a Spanish burton, you make it yourselves? A. Yes, sir.

XQ. 96. And when you do not use it, it is because you do not make it up yourselves—it is not a permanent part of the ship?

A. It is necessary. It should be there. I seen it done in all vessels.

XQ. 97. You answer my questions. It is not a permanent part of the ship. You take the ropes and make the Spanish burton yourselves whenever you want to use it?

A. Yes, sir, we do that.

XQ. 98. This sling you used was plenty long enough to pass through the eye and to tighten up onto the lumber on your slingload, was it not?

A. Yes, it was just one turn and rove through the eye.

XQ. 99. And you could just tighten it on the lumber the same as if you had two turns?

A. No. When you see—when it is single like that, it allows so much because the top of the plank is flat,

(Deposition of George Thomas Cainan.)

and it allows the sling to go that way, and the load that way (forming a triangle with his two fore-fingers).

XQ. 100. Cannot you drive the end of the rope down taut?

A. You can drive it, but it would swing back again; you can never—

XQ. 101. How can it swing back? Would not the load turn up to the upright portion of the rope that went through the eye? Why don't you answer the question?

Mr. HENGSTLER.—Finish your answer. You just said, "You can never," and you did not finish what you were going to say.

A. What question is there to answer? Can I show it on something?

Mr. FRANK.—XQ. 102. Take a piece of paper.

A. I will take this book.

XQ. 103. Take a piece of paper and draw it.

A. (After making a drawing on a piece of paper.) One part is underneath and comes up through here (indicating); another part comes [54] that way (indicating). It is rove through the eye. If you happen to squeeze that part down flat (indicating), the plank is bound to jump up again when there is a weight taken away from it.

Mr. HENGSTLER.—You mean the rope is bound to jump up again?

The WITNESS.—Yes. By a round turn, it would just lay flat with the planks all round.

(Deposition of George Thomas Cainan.)

Mr. FRANK.—XQ. 104. Did you try to drive it down on this occasion?

A. Yes, we shoved it down as far as we could with our hands.

XQ. 105. With your hands? A. Yes, sir.

XQ. 106. Now, as I understand you, this had passes clear over the vessel and over to the wharf, and then struck the wharf and most of the load fell in between the wharf and the vessel into the water?

A. Most of the load fell between the wharf and the vessel's side.

XQ. 107. When this was swung over, what were you doing?

A. I was looking at it. We generally look to see that it goes clear of the ship. We don't like to see pieces falling out there every time.

XQ. 108. Did you keep your eye on that slingload?

A. We generally keep an eye on it all the time, on every sling we send up.

XQ. 109. What I want to know is, did you watch that slingload till it struck the wharf and dropped—did you keep your eye on it all the time?

A. I kept my eye on it all the time.

XQ. 110. And before it went up, you were tending to your own business, making up your own pile?

A. Before it went up?

XQ. 111. Yes, making up your own slingload.

A. Yes, that was the particular slingload.

XQ. 112. You were paying attention to your own

(Deposition of George Thomas Cainan.)
business; you were not paying attention to what anybody else was doing?

A. I was looking up at it. I stood looking up there a second or two, looking up to see the sling.
[55]

XQ. 113. And you were not paying attention to what anybody else was doing? A. No, sir.

XQ. 114. Now, as I understand you, the objection you have to the use of rope is that it is apt to chafe and give way; is that right? A. Yes, sir.

XQ. 115. That is about the only objection there is to it?

A. And it is slippery at the same time.

XQ. 116. The rope is slippery?

A. When it is new, and when it is old it is chafed.

XQ. 117. Your idea is that rope is more likely to break than chain; is that it? A. Yes, sir.

XQ. 118. Before you went on the "Sophie Christenson," had you been in the lumber trade?

A. Yes, sir.

XQ. 119. How long? A. About five months.

XQ. 120. In what vessel did you go?

A. In the "Bendixen."

XQ. 121. Any other?

A. No, that was the first one.

XQ. 122. Is that the only one? A. Yes, sir.

XQ. 123. You were in her for five months?

A. Yes, sir.

XQ. 124. Where did you go in her?

A. Between the Sound and 'Frisco.

XQ. 125. Between the Sound and 'Frisco?

(Deposition of George Thomas Cainan.)

A. Yes, sir.

XQ. 126. How many days was the "Sophie Christenson" discharging there all together?

A. I couldn't tell that exactly, how many days.

XQ. 127. Give it to us as near as you can.

A. Twelve days.

XQ. 128. How many days had she been discharging when this accident happened? A. One day.

XQ. 129. Only one day? A. Yes, sir.

XQ. 130. And she was discharging eleven days after that? A. About that.

XQ. 131. Were they discharging from the hold at this time?

A. No; discharging from the deck. [56]

XQ. 132. Only the deck?

A. Only the deck.

XQ. 133. About how many pieces were there in this slingload that spilled?

A. How many pieces spilled?

XQ. 134. How many were there in the slingload itself? A. About eight to ten.

XQ. 135. All long pieces?

A. They were about 20 feet long.

XQ. 136. And nearly all of them spilled out into the water, did they not? A. All but three.

XQ. 137. And those three hung a bit, did they?

A. No; they kind of came down last?

XQ. 138. The sling itself did not break, did it?

A. No, the sling itself did not break.

XQ. 139. Nothing at all broke about the machinery anywhere? A. No, nothing at all.

(Deposition of George Thomas Cainan.)

XQ. 140. All that happened was that the lumber came out of the sling; is that right?

A. The lumber came out of the sling.

Redirect Examination.

Mr. HENGSTLER.—ReDQ. *L.* Who was in command of the schooner at the time this work was going on, Mr. Cainan? I mean who was in charge of the work?

A. The mate was in charge of the work.

ReDQ. 2. He superintended it, did he?

A. Yes, sir.

ReDQ. 3. The work was going on according to his directions, was it not? A. Yes, sir.

ReDQ. 4. Who directed you with regard to what slings you used in this case?

A. No one directed, because we know ourselves. The slings when thrown from the wharf went to the ship.

ReDQ. 5. And you used the slings which were thrown from the wharf on to the ship?

A. Thrown from the wharf.

ReDQ. 6. Who would give directions with regard to the gear and tackle to be used in discharging?

A. The mate looked out for that. [57]

ReDQ. 7. Mr. Cainan, you will go on a voyage from here as soon as you find a ship, will you not?

Mr. FRANK.—I object to that as leading.

A. Yes, sir.

Mr. HENGSTLER.—ReDQ. 8. Are you looking for a ship now?

Mr. FRANK.—I object to that as also leading.

(Deposition of George Thomas Cainan.)

A. Yes, sir.

Mr. HENGSTLER.—ReDQ. 9. When do you intend to leave this port, Mr. Cainan?

A. As soon as possible. I am only waiting for this thing to be over, and I am going.

ReDQ. 10. Have you any ship in view now?

A. No, sir. I never look for a certain ship. The first one that comes I take that satisfies me.

Recross-examination.

Mr. FRANK.—ReXQ. 1. How long have you been staying here waiting for this?

A. I just came ashore from the "Vidette" last Friday night.

ReXQ. 2. You have been waiting for this since then?

A. No, I only took a few days off, when I leave on a ship.

ReXQ. 3. At present you have no particular ship to go in? You have no particular ship, and don't know just what you are going to do?

A. No, sir. Shipping is pretty fair, and I intend to ship now while shipping is good.

Further Redirect Examination.

Mr. HENGSTLER.—ReDQ. 11. Do you mean to say you do not know what to do now—you do not mean that?

A. I don't know what to do—what do you mean?

ReDQ. 12. What do you intend to do after you are through here?

A. I intend to go to sea right away. [58]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I, James P. Brown, a United States Commissioner for the Northern District of California, do hereby certify:

That the reason for taking the foregoing deposition in the cause in the caption of the said deposition named is that the witness George Thomas Cainan, as stated in said notice, is bound on a voyage to sea.

I further certify that on the 18th day of July, in the year one thousand nine hundred and five, at 9:30 o'clock A. M. of said day, I was attended by L. T. Hengstler, Esq., of the firm of Messrs. Andros & Hengstler, proctor for the libelants, and by Nathan H. Frank, Esq., of the firm of Messrs. Frank & Mansfield, proctor for the claimants, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth; that said deposition was, pursuant to the stipulation of the proctors for the respective parties hereto, taken in shorthand by Louis Seidenberg, and afterwards reduced to typewriting; that the reading over and signing of the said deposition by the witness was, by the aforesaid stipulation, expressly waived.

I further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the United States District Court for the Northern District of

California, the Court for which the same was taken.

And I further certify that I am not of counsel, nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In Testimony Whereof, I have hereunto subscribed my hand, at my office in the City and County of San Francisco, State of California, this — day of July, 1905.

JAS. P. BROWN,
United States Commissioner Northern District of
California, at San Francisco. [59]

[Endorsed]: Filed Jul. 31, 1905. Jas. P. Brown,
Clerk. By John Fouga, Deputy Clerk. [60]

UNITED STATES OF AMERICA.

District Court of the United States, Northern District
of California.

IN ADMIRALTY.

DAVID JAMES FLYNN et al.,

Libelants,

vs.

E. A. CHRISTENSON et al.,

Defendants.

Notice of Taking Deposition of August Ehlert.
To Messrs. Frank & Mansfield, Proctors for Defendants.

You are hereby notified that August Ehlert will be

examined, *de bene esse*, in the above-entitled cause, on behalf of the libelants, before James P. Brown, Esquire, United States Commissioner for the Northern District of California, at San Francisco, on the 8th day of August, A. D. 1905, at 11 o'clock A. M., at the office of Messrs. Andros & Hengstler, room No. 6, in the building situated on the northeast corner of Sansome and Halleck Streets, and numbered 320 on Sansome Street, in the City of San Francisco, in the District aforesaid; and you are hereby further notified to then and there appear and propound such questions to said witness as you may deem fit.

The cause for taking the deposition of the above-named witness is that he is bound on a voyage to sea.

Yours, etc.,

ANDROS & HENGSTLER,
Proctors for Libelants.

San Francisco, August 7th, 1905. [61]

In the District Court of the United States, in and for
the Northern District of California.

No. 13,310—IN ADMIRALTY.

DAVID JAMES FLYNN et al.,

Libelants.

vs.

E. A. CHRISTENSON et al.,

Respondents.

Deposition of August Ehlert, for Libelants.

BE IT REMEMBERED: That on Tuesday, August 8, 1905, pursuant to the notice and stipulation hereunto annexed, at the office of Messrs. Andros

(Deposition of August Ehlert.)

& Hengstler, Room No. 6, 320 Sansome Street, in the City and County of San Francisco, State of California, personally appeared before me, James P. Brown, a United States Commissioner for the Northern District of California, to take acknowledgments of bail and affidavits, etc., August Ehlert, a witness produced on behalf of the libelants in the above-entitled matter.

L. T. Hengstler, Esq., of the firm of Messrs. Andros & Hengstler, appeared as proctor for the libellants, and Nathan H. Frank, Esq., of the firm of Messrs. Frank & Mansfield, appeared as proctor for the respondents.

And the said witness, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as is hereinafter fully set forth. [62]

It is hereby stipulated and agreed that the testimony of August Ehlert may be taken in shorthand by Clement Bennett and thereafter put into typewriting, and the reading over and signing of said testimony by the witness is hereby waived.

All other rights under the notice for taking said deposition are reserved.

ANDROS, HENGSTLER, HUMPHREYS,
Proctors for the Libelants.

FRANK and MANSFIELD,
Proctors for the Respondents. [63]

(Deposition of August Ehlert.)

AUGUST EHLERT, called for the libelants, sworn.

Mr. HENGSTLER.—Q. 1. How old are you, Mr. Ehlert? A. Fifty-five.

Q. 2. What is your occupation? A. Seaman.

Q. 3. How long have you been a seaman?

A. I went to sea in 1865.

Q. 4. And have followed that occupation ever since? A. Yes, sir.

Q. 5. What experience, if any, have you in the lumber trade along this coast, and lumber vessels?

A. In the last 18 years.

Q. 6. What vessel were you on in August, 1903?

A. "The Sophie Christenson."

Q. 7. Whereabouts was she during that month?

A. She laid at San Pedro, alongside the wharf.

Q. 8. In what work was she engaged? A. Discharging lumber.

Q. 9. Do you remember anything particular that happened on August 3, 1903, on the "Sophie Christenson"? A. Yes, sir.

Q. 10. What happened?

A. There was a man killed by the lumber falling on him.

Q. 11. What was his name? A. James Flynn.

Q. 12. Was that during the discharge of the vessel?

A. Yes, sir, during the discharge of the vessel.

Q. 13. Who was in charge of the work at the time?

A. The chief officer.

Q. 14. Do you remember his name, Mr. Ehlert?

(Deposition of August Ehlert.)

A. I think his name was Tom Anderson. His first name was Tom. I don't remember the other name. I think it was Anderson. We always called him Tom.

Q. 15. How was the unloading done—by hand or otherwise?

A. It was hoisted up by a steam donkey.

Q. 16. Hoisted up on what, and how?

A. By a donkey-fall.

Q. 17. From where was it hoisted?

A. From the deck.

Q. 18. And where was it taken to?

A. To the wharf. [64]

Q. 19. Will you tell us just how the lumber was fastened when it was hoisted up?

A. Yes, sir; we had a rope with an eye on each end. We make up a slingload 24 by 24, then take the end, take one end and reeve through the other end, as it were, and hoist it up.

Q. 20. How many times did that rope go around?

A. That rope was too short. That did not go around only once. By rights, it ought to go around twice—a round turn around the load it ought to be, but that rope was so that I could not make it.

Q. 21. What part of the vessel were you working on? A. I was at work on the starboard side.

Q. 22. Which side of the vessel was lying alongside of the wharf? A. The port side.

Q. 23. Was anybody else working on your side, on the starboard side? A. Yes, sir.

Q. 24. Who?

A. A young fellow named Kenyon.

(Deposition of August Ehlert.)

Q. 25. How many of you did it take to make up a slingload? A. Two men.

Q. 26. Were you and Kenyon mates in making up a slingload? A. Yes, sir.

Q. 27. How many loads were being made up—how many slings?

A. Three. There were three gangs running.

Q. 28. Whereabouts was the other gang?

A. Flynn was on the port side.

Q. 29. Who was his mate, do you remember?

A. I forget his name—a young man named Soderchrist, I think was his name.

Q. 30. Where was the other set of men who were making up slingloads?

A. I think they were in the hold on the starboard [65] side, making up a load.

Q. 31. By whom were the slings provided which you used in making the loads? A. The captain.

Q. 32. Did he hand them to you personally?

Mr. FRANK.—I object to that as leading.

Mr. HENGSTLER.—Q. 33. How do you know they were provided by the captain?

A. Because the mate told me, when they were making the slings, he told the captain that they were too short.

Mr. FRANK.—I move to strike that out as incompetent, immaterial and hearsay.

Mr. HENGSTLER.—Q. 34. How long had the work of discharging been going on before the accident happened, if you remember?

A. As near as I can think, about four days; three

(Deposition of August Ehlert.)

days and a half or four days. I cannot say exactly because we had a good deal of lumber off.

Q. 35. Do you mean it was three and a half days before the accident happened?

A. Before the accident happened.

Q. 36. What time of the day did it happen?

A. A little after 8 o'clock in the morning.

Q. 37. Now, had you been working on lumber vessels before in discharging lumber? A. Yes, sir.

Q. 38. And was the way which you followed here by means of the sling which you described the usual way in your experience?

Mr. FRANK.—I object to that as being leading.

A. No, sir, it was not the usual way.

Mr. HENGSTLER.—Q. 39. What is the usual way?

A. The usual way is to take a round turn round the lumber with the sling.

Q. 40. Will you describe what you mean by "a round turn" as distinguished from the way that you fixed it this time?

A. I can describe that by a piece of paper, or a rope, or [66] anything of that description.

Q. 41. I will give you a piece of paper. Do you want to draw it? A. Yes, sir.

(The witness draws a diagram.)

A. (Continuing.) This is the way we had it, and this is the way it ought to be. (Pointing.)

Q. 42. I will mark this first "A." You say "A" represents the way you had it? A. Yes, sir.

Q. 43. I will mark the other "B."

(Deposition of August Ehlert.)

A. That is the way it ought to be.

Q. 44. "B" is the way it ought to be?

A. There is a round turn round the lumber that jams the lumber better. It always leaves a space like that, that space here (pointing). That is where the lumber falls out.

Q. 45. Pointing to figure "A" and drawing a straight line across the loop in figure "A."

A. This jams it together right round (marking the inner smaller circle in "B").

Q. 46. What contrivance is there used, or was there used at that time, for the purpose of making the load swing out on the wharf?

A. There was no contrivance for the purpose of making the load swing out on the wharf. The gaff went back and forward to suit itself.

Q. 47. After the load had swung out on the wharf, was there any machinery or contrivance to keep it out over the wharf and prevent it from swinging back on board the ship? A. No, sir.

Q. 48. Now, did you witness the accident, Mr. Ehlert? A. Yes, sir.

Q. 49. Describe to us as well as you remember it just how it happened. [67]

A. Well, the load went up—I hooked it on on this—the load went up, and the mate always gives the order. The mate says, "Go ahead." He gives one whistle, which means "Go ahead." When he thinks it is high enough, he gives another whistle to stop. Then he sings out "Come back." When the load swings towards the wharf, he sings out "Come back."

(Deposition of August Ehlert.)

Q. 50. Go on and tell us how it happened with this particular load.

A. The mate sang out "Go ahead." He sang out "Hi." He sang out "Come back." When the load came back, it hit the stringer on the wharf because the ship was lower than the stringer, about 2 feet lower than the stringer, and it shook it, and half of it fell out between the ship's side. There were three planks left, and the gaff swung inside because there was nothing to hold it on the wharf. The gaff swung in, and the planks, what was left, fell between the ship's side and the wharf; three planks were left and they swung in and killed him. It was the second time, you know.

Q. 51. Did you notice if these planks touched the other man?

A. Yes, sir; they hit the other man, too; spanked him here (illustrating).

Q. 52. Hit him on the arm?

A. Yes, sir; hit him on the arm kind of flanting. It did not hurt him any.

Q. 53. On other vessels that you have been working in discharging lumber, has there been any contrivance for the purpose of keeping the lumber out on the wharf and keeping it from swinging back on the boat again?

A. Yes, sir; I have been in vessels where there has been a guy on the wharf, and one man stands on the wharf and holds it ashore, so that it cannot swing back. I was in the schooner "Comet" that way.

(Deposition of August Ehlert.)

Q. 54. Which way does it take longer, as far as time is concerned, the way the unloading was done in this vessel or the way you have described its being done on other vessels? Does it make any difference in the length of time that it takes?

A. No, sir; it would not make much difference in the length of time when you can hold the gaff on the wharf.

Q. 55. How about making the slingload—would it take longer to make it the proper way as you have described it?

A. That would take a little longer, yes, to make it this way (pointing to the diagram). Of course, you have got to take a round turn with this. It takes a little longer, but not much.

Q. 56. Before this accident happened, did you complain to any of the officers of the ship with regard to the sling that they were using?

Mr. FRANK.—Now, I make objection to that, first that it is leading, and second that it is incompetent and immaterial.

A. Yes, sir, I did.

Mr. HENGSTLER.—Q. 57. To whom?

A. To the mate.

Mr. FRANK.—This is subject to the same objection.

A. (Continuing.) There was lumber fell out the day before. I told him that somebody would get killed here yet with the slings. "Oh," he said, "there are a lots more of Dutchmen." They killed an Irishman for a change.

(Deposition of August Ehlert.)

Mr. HENGSTLER.—Q. 58. Have you known of any vessels that you have been working on that used different material for slings from the material which you have described?

Mr. FRANK.—I object to the question as incompetent, immaterial and irrelevant.

A. Yes, sir. [69]

Mr. HENGSTLER.—Q. 59. What material?

A. Chains.

Q. 59. What, in your experience, is the safest sling?

Mr. FRANK.—Objected to as incompetent, irrelevant and immaterial.

A. The chain sling is the safest.

Mr. HENGSTLER.—Q. 60. Why?

A. In the first place, it is strong, and doesn't break; in the second place, it jams the lumber up better.

Mr. HENGSTLER.—Q. 61. What is the custom—what kind of a chain is used customarily on lumber vessels as far as your experience goes? What is the customary way of unloading, by chain slings or by rope slings?

A. I have been unloading with chain slings and been unloading with rope slings, but rope slings go quicker—there is quicker work with them. You have always got to wait for a chain sling because there is only one. You have got to wait until it comes back and make up your load. There is always a little time lost.

Q. 62. In using rope, the custom is not to wait?

A. No, sir, because there are lots of rope, and you

(Deposition of August Ehlert.)

take up your load. When the hook comes back you hook on.

Q. 63. Did you notice what kind of slings were used on this vessel after the accident?

Mr. FRANK.—I object to the question as immaterial.

A. Yes, sir; the next day we used chain slings.

Mr. HENGSTLER.—Q. 64. Do you know whether the captain was present at the time—did you see him around?

A. No, sir, he was not. He came around from aft after the accident happened.

Q. 65. Had he been around the previous day, or at any time previous, while the unloading was going on, and seen the way that the unloading was being done?

A. Oh, yes, he was there all the time. [70]

Q. 66. And during the time when the vessel was being unloaded up to the time of the accident, what kind of slings were used? A. Them rope slings.

Q. 67. The short ones that you have described?

A. The short ones that I have described.

Q. 68. Did they at any time use any slings that you could have made a round turn with twice?

A. No, sir.

Q. 69. Are you looking for a vessel now, Mr. Ehlert? A. Yes, sir.

Q. 70. You are about to go on a voyage to sea?

A. Yes, sir.

Cross-examination.

Mr. FRANK.—XQ. 1. Mr. Ehlert, when do you expect to go to sea?

(Deposition of August Ehlert.)

A. Any time I can get a chance.

XQ. 2. Then you have no vessel now?

A. Not at the present, now.

XQ. 3. You are just on the front, and if you can get a vessel you will go to sea? A. Yes, sir.

XQ. 4. What was the last vessel that you were in?

A. The barkentine "Fullerton."

XQ. 5. Where did she go from?

A. We went from Port Hartford to Honolulu, Honolulu to Port Harford, and Port Harford back here. I left here in "Port Costa."

XQ. 6. She is an oil ship? A. Yes, sir.

XQ. 7. How long was it that you were in her?

A. Nearly two months—fifty-seven days.

XQ. 8. Before that what vessel were you in?

A. I was in the "Mary E. Foster."

XQ. 9. Where did she go from?

A. She came from Honolulu.

XQ. 10. From Honolulu to where?

A. From Honolulu to La Haina, and from there to San Francisco.

XQ. 11. That was a sugar vessel?

A. A sugar vessel, yes. [71]

XQ. 12. How long were you in her?

A. About five weeks somewhere.

XQ. 13. And previous to that what vessel were you in? A. In the "Marsden."

XQ. 14. Also in the Honolulu trade?

A. No, sir; it went to Hilo.

XQ. 15. Also carrying sugar? A. Yes, sir.

XQ. 16. How long were you in her?

(Deposition of August Ehlert.)

A. Nearly two months in her.

XQ. 17. Previous to that?

A. I was in a vessel called the "Gardner City."

XQ. 18. Where did she run?

A. She came from Tacoma to San Francisco, load and discharge there.

XQ. 19. Came down empty?

A. No, sir; we loaded in Tacoma and came down here to discharge the lumber.

XQ. 20. From there, where did she go?

A. I left her here at that time.

XQ. 21. Where did she discharge—at the Oakland Wharf? A. At the Sunset Lumber Company.

XQ. 22. When was that—can you give about the date? A. Last October.

XQ. 23. Who was her captain?

A. A captain by the name of—I have forgotten his name. Anyhow, we lost the deckload coming down. I remember that all right.

XQ. 24. Lost your deckload? A. Yes, sir.

XQ. 25. Before that what vessel were you in?

A. I was in the schooner "Alice."

XQ. 26. Where did she run?

A. No—I was in the "Minnie A. Caine."

XQ. 27. Where did she go?

A. She went from San Pedro to Tacoma.

XQ. 28. From San Pedro to Tacoma?

A. And back again to San Pedro—Redondo, in fact. [72]

XQ. 29. Went up empty, I suppose, and came down with a cargo of lumber? A. Yes, sir.

(Deposition of August Ehllert.)

XQ. 30. Had you been with her long, more than that one round trip? A. One round trip.

XQ. 31. Go on and give us the next vessel. I want to see what vessels you have been on.

A. I cannot remember what vessel I was on before that.

XQ. 32. Give me any vessel that you remember that you have been on.

A. I don't keep run of all the vessels that I have been on.

XQ. 33. Give me those that you can keep run of.

A. I was in the "Solano."

XQ. 34. That is a schooner? A. Yes, sir.

XQ. 35. What did she carry?

A. Sugar and lumber.

XQ. 36. Where from—she carried sugar from where? A. From Honolulu.

XQ. 37. And lumber from here down, and sugar back; is that right? A. Yes, sir.

XQ. 38. One trip? A. One trip.

XQ. 39. Any other vessel?

A. I was in the "George C. Perkins."

XQ. 40. She was also in the sugar trade?

A. A lumber vessel.

XQ. 41. Where from?

A. From the Sound to Honolulu and back again.

XQ. 42. One trip?

A. Yes, sir. I was in the "Endeavor"—the schooner "Endeavor."

XQ. 43. Where from?

A. The Sound to Honolulu and back again.

(Deposition of August Ehlert.)

XQ. 44. One trip? A. Two trips in her.

XQ. 45. What did she carry? A. Lumber.

XQ. 46. That is down, and came back empty?

A. Yes, sir, came back empty.

XQ. 47. Any others?

A. I was in the barkentine "Amelia."

XQ. 48. Where from?

A. The Sound to Honolulu and back again. [73]

XQ. 49. Is that the trade that you have been principally in?

A. Yes, sir; and I was in the schooner "Compeer."

XQ. 50. Also from the Sound to Honolulu?

A. No, sir, to Kahului.

XQ. 51. Also go there for sugar?

A. No, sir; went back again to the Sound.

XQ. 52. What did you carry? A. Lumber.

XQ. 53. Are all these vessels vessels that you have been in since you have been in the "Sophie Christenson"?

A. No, sir; I have been in them before. Before I got in the "Sophie Christenson" I was in the schooner "Sonoma." I went to Australia with her.

XQ. 54. What did she carry to Australia?

A. Passengers and general cargo.

XQ. 55. Any more that you can remember?

A. I was in the schooner "Alice."

Mr. HENGSTLER.—You stated that before.

Mr. FRANK.—XQ. 56. From where?

A. To Tacoma.

XQ. 57. To where? A. To here.

(Deposition of August Ehlert.)

XQ. 58. That is not the schooner that lost her deck load?

A. No, that is the schooner "Gardner City."

XQ. 59. Any others?

A. That is all I can remember now. I have been in a good many of them, and in the "Lottie Carson," too.

XQ. 60. Does that comprise the substance of your service on the coast?

A. No, sir; that is not half. I cannot remember any more.

XQ. 61. Now, in your service on this coast, has it been generally off shore like this Honolulu and Kahului business—more off shore than coastwise?

A. I sailed between San Pedro a good many times, between San Diego and the Sound, between Honolulu and so on.

XQ. 62. Then you have been engaged in any kind of trade that came along; you have not been confining yourself to the coast trade? [74]

A. That is supposed to be coast trade—Honolulu vessels.

XQ. 63. When you are speaking of coast trade, that is, including Honolulu vessels; is that right?

A. Yes, sir.

XQ. 64. You made up this slingload, didn't you?

A. Yes, sir.

XQ. 65. You did it yourself? A. Yes, sir.

XQ. 66. Kenyon working with you at the time?

A. Yes, sir; he was working with me.

XQ. 67. Did Kenyon go and get the sling to make

(Deposition of August Ehlert.)
the load up with, do you remember?

A. Yes, sir; I believe it was Kenyon who got the sling.

XQ. 68. He brought it to you, and then you two went to work and laid it out.

A. One man stands on each side of the load, the man who has got the sling in his hand puts it underneath and reeves it through the eye.

XQ. 69. Then you make up your load of lumber, that is, you pile it up before you bring your sling to it? A. Yes, sir.

XQ. 70. After you get what you think is a big load enough, you go off and get the sling and put it around and hoist it right away? A. Yes, sir.

XQ. 71. Is that right? A. That is right.

XQ. 72. You did that in this instance?

A. In this instance.

XQ. 73. Do you know what the size—I mean around—of this pile of lumber was that you put the sling around?

A. It was 24 by 24, or 24 by 26; I cannot say exactly. That is the average load that we make with them short slings.

XQ. 74. Are you testifying now from memory of the load, or only because you think that was an average load that you made?

A. I am testifying from memory of the load.

XQ. 75. Do you remember speaking to a man down in San Pedro in last August about this matter, telling him that your slingload was at that time 36 by 36?

A. No, sir; I did not. [75]

(Deposition of August Ehlert.)

XQ. 76. Are you sure you did not tell him?

A. I am sure I did not.

XQ. 77. What did you tell him?

A. I cannot remember speaking to anybody of 36 by 36.

XQ. 78. You cannot remember anything about it?

A. No, sir; I cannot remember that.

XQ. 79. Did you say anything to him at that time about there being too much lumber in the load for the length of the sling?

A. I don't remember that I said anything to anybody about it.

XQ. 80. You don't remember having spoken to anybody about it at all?

A. No, sir; not about the lumber, in San Pedro or any place else.

XQ. 81. You do not recall it; is that right?

Mr. HENGSTLER.—That is what he said.

Mr. FRANK.—I am examining him.

XQ. 82. Is that right? Just read that question to him, Mr. Reporter.

(The Reporter reads the last question as follows:·

“Q. You do not recall it; is that right?”)

A. I don't remember it, no.

XQ. 83. Now, at the time that this slingload was made up, what did you say? Did you notify the mate in any way that you were ready to have it hoisted?

A. Yes, sir; he see it. He says, “Go ahead.”

XQ. 84. Now, after he said “Go ahead”—you said he whistled, is that it?

A. Sometimes he whistled; sometimes he says, “Go

(Deposition of August Ehlert.)

ahead." It all depends what strikes him; it is his own business.

XQ. 85. What did you say upon this occasion when this slingload went up? A. He whistled.

XQ. 86. He whistled? A. Yes, sir.

XQ. 87. Did he say anything else?

A. No, sir; he did not say nothing else.

XQ. 88. He did not say anything else?

A. No, sir.

XQ. 89. What did he do when it got up into the air? [76]

A. He whistled again. That means to stop.

XQ. 90. Did he say anything else, then?

A. After the donkey-driver stopped, he said, "Come back."

XQ. 91. Is that all he said?

A. He said, "Come back"; that is what he said.

XQ. 92. Did he say anything else?

A. No more.

XQ. 93. What did he do?

A. Then the load came back and hit the stringer.

XQ. 94. Did he not do anything with sending the load out?

A. He did not do anything to send the load out. It flew out itself.

XQ. 95. Did he not put his hand on it?

A. I did not see him put his hand on it.

XQ. 96. What were you doing at that time, after your load went up in the air—turn around to get another? A. I looked at the load going up.

XQ. 97. After it got up and swung out, when he

(Deposition of August Ehlert.)
said—what is it—“Come home”?

A. “Come back.”

XQ. 98. After he did that, what did you do—turn round to go about your business to make up another load? A. No, sir.

XQ. 99. What did you do?

A. The lumber fell out then.

XQ. 100. When did you first see this man during that time, this man that you say got killed?

A. I knew him before that doing longshore work.

XQ. 101. I mean, after your load went up, when did you first see him?

A. When I first saw him after the load was up?

XQ. 102. Yes.

A. He was making up his load on the port side.

XQ. 103. Did you see him making up his load on the port side? A. Yes, sir.

XQ. 104. Was he making up his load when your load was first going up?

A. Yes, sir; he was making up his load then. [77]

XQ. 105. What was he doing?

A. Just standing. He had hold of two timbers like this, and his partner shoved the block underneath the two timbers.

XQ. 106. When was that that he had hold of the two timbers and his partner was shoving, with respect to the time that your load went up?

A. It was just at the time when the load went up and swung back. That was the time that he was right underneath it.

XQ. 107. What else were you going to say?

(Deposition of August Ehlert.)

Mr. HENGSTLER.—He finished.

Mr. FRANK.—Q. 108. What else were you going to say? Did you have anything further to say?

A. I don't know if I want to say anything else.

XQ. 109. Then, as I understand you, you first saw him after the load struck the wharf; is that what you mean?

A. I saw him all the time when I was working there. He was working there all the time. He could not escape my eye when he was as far as from here to there (pointing).

XQ. 110. How far would you call that?

A. About 14 feet, I guess, that is, the distance between me and him. I was on the starboard side of the main hatch, and he was on the port side. I was looking at him all the time.

XQ. 111. Where did you get your lumber from to make up the load? A. The starboard side.

XQ. 111½. Was it lying right there when you picked it up? A. Yes, sir.

XQ. 112. You were not paying attention to something else and looking around to see what somebody else was doing? You were looking at the lumber as you picked it up?

A. When I send up lumber, I always look up at my load, and when it is landed safely on the wharf I go back to my work. [78]

XQ. 113. Is that the custom with all sailors aboard of ship?

A. I don't know what the custom is with other people; I do.

(Deposition of August Ehlert.)

XQ. 114. That is what you do?

A. We are supposed to see the load is right.

XQ. 115. Did you hear anybody call out to stand clear when your load went up?

A. Yes, sir—not when the load went up, but when the load fell. That is the time they sang out to stand clear, but it was too late then.

XQ. 116. It was too late then? A. Yes, sir.

XQ. 117. You are sure no one said to stand clear until the load fell? A. That is right.

XQ. 118. You had a large deckload when you began discharging? A. Yes, sir.

XQ. 119. How far down had you discharged your deckload—pretty nearly finished?

A. I guess we had about 3 feet on the deckload more.

XQ. 120. You were also discharging from the hold at the same time? A. Yes, sir.

XQ. 121. About how deep had you gotten down into the hold?

A. There was a good deal in the wings. We were on each side of the hatch, though. We were about three tiers out each side of the hatch.

XQ. 122. The full length of the ship?

A. Yes, sir, about that.

XQ. 123. This, I understand you to say, was about three and a half or four days that you had been at work so discharging?

A. Yes, sir, about that. I don't keep run exactly. It must have been about four days—something like that.

(Deposition of August Ehlert.)

XQ. 124. During all this time you had been discharging this lumber in the same way?

A. In the same way.

XQ. 125. With the gaff swinging out, and the same slings that you were using?

A. The same slings. [79]

XQ. 126. And the same men were at work?

A. The same men were at work.

XQ. 127. Flynn had been at work just the same as the rest of you?

A. No, sir, he had only been at work about two days and a half.

XQ. 128. Two days and a half he had been doing work?

A. That is all. He was taking the second mate's place. The second mate was supposed to work lumber in those ships. The second mate was made mate.

XQ. 129. And Flynn was working about two days and a half when this accident happened?

A. Two days and a half, longshoreman.

XQ. 130. He was not a member of the crew?

A. No, sir, he was not a member of the crew.

XQ. 131. Did I understand you that some lumber had fallen out the day before, out of the sling?

A. Yes, sir.

XQ. 132. While you folks were all on deck?

A. No, sir, I was in the hold when the lumber fell out.

XQ. 133. You were in the hold?

A. I was working in the hold, on the starboard side.

(Deposition of August Ehlert.)

XQ. 134. How did you know the lumber had fallen out?

A. I know when it fell on top of me. I know when it falls out. It nearly fell on top of me.

XQ. 135. It nearly fell on top of you when you were in the starboard side of the hold?

A. Yes, sir. The lumber flies in all directions.

XQ. 136. How far down were you in the hold at this time?

A. About 5 foot and a half, I guess, or 6 feet; something like that.

XQ. 137. That was the day before?

A. The day before.

XQ. 138. And you were working in the wing, were you? A. Yes, sir.

XQ. 139. About how far over in the wing were you at the time?

A. When this happened I was in the hatch.

XQ. 140. When this happened you were in the hatch?

A. Yes, sir, [80] underneath the hatch coaming, like this (illustrating). This is the hatch coaming, and here I was, about here.

XQ. 141. You had your lumber taken out of the wing, hadn't you? A. Yes, sir.

XQ. 142. About how far out of the wing?

A. I could not say that now.

XQ. 143. Considerable of it?

A. Yes, sir, a good deal.

XQ. 144. Both wings?

(Deposition of August Ehlert.)

A. A little more out on the starboard than on the port.

XQ. 145. Running the full length of the ship?

A. I don't remember that, either—what you call the trunk; some is left aft and some forward.

XQ. 146. Some of you worked aft and some of you forward—what did you say?

A. Some of that lumber is left aft and some forward—in the trunk.

XQ. 147. Everybody on board the ship knew that it had fallen out the day before?

A. I don't know that everybody knew it.

XQ. 148. All the men that were working around there knew it? A. I don't think they did.

XQ. 149. They did not? A. No, sir.

XQ. 150. Why should they not know it?

A. I don't know.

Mr. HENGSTLER.—You do not have to answer that question. I instruct you that is not a proper question.

Mr. FRANK.—I ask you, Mr. Commissioner, whether or not the witness is to answer the question.

Mr. HENGSTLER.—The question, "Why should they not know it?" is not proper.

A. I cannot tell.

The COMMISSIONER.—You have been going along, and the questions that you have objected to have been asked and answered. If it is put in a shape that confuses him, he will make a confusing reply. [81] On its face, the question itself will tell.

Mr. HENGSTLER.—I object simply because it is

(Deposition of August Ehlert.)

a terrible waste of time. How could this man know?

Mr. FRANK.—We will argue that to the Judge. I have a fairly intelligent idea of how to cross-examine the witness, and I have a right to cross-examine him in my own way. I object to any interference by counsel on the other wise, except in a proper and legal manner making such objections as he may have to the testimony to put into the record.

Mr. HENGSTLER.—I appeal to the Commissioner whether it is necessary to go in that way and ask this man what other men knew at the time.

The COMMISSIONER.—I would let the question go, and the answer is accompanied with your objection.

Mr. HENGSTLER.—I object to the question because it is not a fair question and is impossible for this man to answer.

Mr. FRANK.—XQ. 151. You do not know where any other men were working except yourself at that time?

A. Yes, sir, there was a gang working in the after part and a gang in the forward part.

XQ. 152. What hatch were you in?

A. The main hatch.

XQ. 153. There was no gang working about the main hatch? A. I was—me and another fellow.

XQ. 154. You and another fellow were working in the main hatch; is that right?

A. Yes, sir, in the main hatch.

XQ. 155. This other gang were out working in the hatch?

(Deposition of August Ehlert.)

A. They make up their load aft and forward. I make up my load aft.

XQ. 156. Were they making up their load on deck ?

A. No, sir, down below.

XQ. 157. The day before everybody was working down below; is that right?

A. Yes, sir, that is right.

XQ. 158. How long had you been working down below—how many days ?

A. It must have been about three days and a half, I guess; three [82] days—something like that. I cannot remember that. I don't keep run of that.

XQ. 159. About three days and a half down below ?

A. The mate looks after those kind of things, how long we have been working.

XQ. 160. I am trying to get your recollection of it. You are testifying here as to things that you know. I want to get your recollection. About three days and a half you had been working down below before this first time when you say lumber fell out of the sling ; is that right ?

A. The lumber fell out ? This business we have been talking about last now ?

XQ. 161. This business that we have been talking about for the last five minutes.

A. You asked how long we were working in the hold ?

XQ. 162. Yes.

A. When this particular thing happened ?

XQ. 163. You say that the day before some lumber fell out of the sling. You were in the hold, and

(Deposition of August Ehlert.)
everybody else was in the hold; is that right?

A. Yes, sir, that is right.

XQ. 164. How long had you been working in the hold at that time? Do you understand the question?

A. Yes, sir.

XQ. 165. How many days had you been down there? A. I cannot tell.

XQ. 166. Your best recollection.

A. Sometimes you work in the hold, and sometimes you work on deck, you see.

XQ. 167. Now, as a matter of fact,—

A. When you work like that, sometimes you work on deck and sometimes you work in the hold; sometimes one gang works on deck and two in the hold, or two on deck and one in the hold. You cannot keep the run of that after two years.

XQ. 168. Then, as a matter of fact, you don't know whether this other gang was working at the time the lumber fell out the day before? A. Yes, sir. [83]

XQ. 169. Then how do you know it—did you see it? A. I see them, yes.

XQ. 170. You saw them at the time the sling fell?

A. One gang was working aft and one gang forward. I was working on the starboard side by myself, and another fellow.

XQ. 171. Then the cargo was all out sufficiently that you could see clear aft and forward; is that right? A. Yes, sir, I could see that.

XQ. 172. That is the way you saw it?

A. Yes, sir, I can see where the lumber came from,

(Deposition of August Ehlert.)

where the people work. A man would be blind if he could not see that.

XQ. 173. Let us understand each other. What I want to know is whether you saw these other men working in the hold at the time, because the cargo was out so that you could see clear out aft and clear forward.

A. Yes, sir; I saw one gang working aft, and one working forward on the port side. I worked on the starboard side, me and Kenyon.

XQ. 174. Now, will you listen to my question so that I can get an answer to what I am asking now. I am asking you if, on this day before when you say that part of the slingload fell out, and you were working in the hold, you say the other men were working in the hold—one gang aft and one forward?

A. On the port side.

XQ. 175. You could see them while you were in the hold? A. Yes, sir.

XQ. 176. And that was because the cargo between you and them was out of the hold?

A. There was no cargo between me and them.

XQ. 177. It was all out? A. It was all out.

XQ. 178. That is what I want to get at. Had you known this man before this accident?

A. Yes, sir, I knew him by name and by sight, that is all.

XQ. 179. What name did you know him by?

A. Flynn. [84]

XQ. 180. Is that what you knew him by? Where had you met him before then?

(Deposition of August Ehlert.)

A. I met him in saloons and on the wharf—everywhere.

XQ. 181. Did you ever meet him before this particular voyage?

A. Yes, sir, the last trip before he was on board, but he did not work then.

Redirect Examination.

Mr. HENGSTLER.—ReDQ. 1. Now, Mr. Ehlert, the rope that was provided for the making up of the slingload, was it long enough to go around any kind of a load twice or make a round turn?

A. No, sir.

ReDQ. 2. On any load that you could have made up?

A. No, sir, it was not long enough to make a round turn.

ReDQ. 3. Is there a standard length or size of rope so that when the rope is given to you, you can tell how it is to be used in making up a slingload?

A. A standard size? Do you mean the length?

ReDQ. 4. Yes; in other words, when you get a certain rope, do you, having experience in that trade, know how it is to be used, whether it is to be used for a single turn or for a round turn?

A. It is not supposed to be used for a single turn. It is supposed to be long enough for a round turn.

ReDQ. 5. Why did you not use this particular rope for a round turn, this particular rope in this case?

A. Because I could not make the average slingload, and the mate would have kicked right off.

(Deposition of August Ehlert.)

ReDQ. 6. Was the rope long enough to go round a single turn twice?

Mr. FRANK.—I object to the question as leading.

A. Round a single length, round a single plank?

Mr. HENGSTLER.—ReDQ. 7. Round a single plank.

A. We do not send single planks up.

ReDQ. 8. Supposing you had tried to put it round a single plank, would that rope have been long enough to give it a round turn on a single plank?

A. Yes, sir, it would have been long enough for it,
[85]

ReDQ. 9. Would it have been long enough to put it round a load with a round turn?

A. Not a proper load, it would not; not the average load that we are making; that we have to make.

ReDQ. 10. Are you required to make an average load?

A. Yes, sir; it has got to be 26 inches high, and 24 wide.

ReDQ. 11. What would happen if you put the rope round the single plank, for instance?

A. The mate would not take it up, and he would tell me to put in more.

ReDQ. 12. When you say that the unloading had been going on a certain length of time before the accident happened, are you sure about that length of time, or are you simply guessing at the time from what you now say?

A. I am simply guessing at it. I am not sure that I know exactly how many hours or days or minutes

(Deposition of August Ehlert.)

we were at work, because we do not keep run of that when we are at work.

ReDQ. 13. The day before, when you stated that some of the planks came out of the sling, you say all the men were working under deck—is that what you said? A. Yes, sir.

ReDQ. 14. Do you mean this: That they were working in the hold all through the day, or simply just happened to be there at the time when the planks came out?

Mr. FRANK.—I object to the question as leading and suggestive,

A. I think all day that time.

Mr. HENGSTLER.—ReDQ. 15. They did not work on the deck that day, you think? A. No, sir.

Recross-examination.

Mr. FRANK.—ReXQ. 1. Mr. Ehlert, did you, during the time you were discharging there at any time, try to make up a slingload smaller than 24 by 26?

A. No, sir, because, if I did, the mate would kick in a minute and tell me to make a bigger load. [86]

ReXQ. 2. You never tried it, did you?

A. The thing is this: To have the load so big so that it can just reeve through and hook.

ReXQ. 3. You never tried to make a smaller load at any time while you were there?

A. I never tried to make a smaller load. I might have one day made it a little smaller, but I could not make it too small so that I could take a round turn with a sling. That would never do.

(Deposition of August Ehlert.)

ReXQ. 4. Nothing happened between you and the mate—you did not try to do it, is that right?

A. Try to do what?

ReXQ. 5. Try to make a smaller load; you never tried to make a smaller load?

A. What do you mean by a “small load”?

ReXQ. 6. Answer my question: Did you or not try to make a smaller load?

A. Once in a while I made a smaller load.

ReXQ. 7. Once in a while you did make a smaller load? A. Yes, sir.

ReXQ. 8. Nothing was said about it, was there?

A. The mate kicked.

ReXQ. 9. The mate kicked?

A. He told me to fill them.

ReXQ. 10. He told you to fill them?

A. Yes, sir.

ReXQ. 11. How often did that happen at that voyage?

A. I could not tell how many times that happened.

It happened pretty often.

ReXQ. 12. It did happen pretty often?

A. Yes, sir.

ReXQ. 13. To you.

A. Yes, sir, and to everybody else.

ReXQ. 14. That is, the mate kicked pretty often during that voyage at your making the loads too small; is that right?

A. Making the loads too small?

ReXQ. 15. Yes.

A. Yes, sir, if I make them too small. I could not

(Deposition of August Ehlert.)

make them too small. In the first place, I have got to fill the slingload up.

ReXQ. 16. When did the mate kick? You say that the mate kicked when you made them too small.

A. Yes, sir; once in a while I might have made it six inches apart, and if there was twelve inches apart he would growl right off. [87]

ReXQ. 17. And that happened quite often?

Mr. HENGSTLER.—That is objected to on the ground that he has already said that it did not happen often.

Mr. FRANK.—ReXQ. 18. That happened quite often during the time that you were discharging the cargo did it not?

A. I don't know how many times it happened. It happened once or twice, I suppose.

ReXQ. 19. You only remember once or twice that you made it too small?

A. I cannot tell about once or twice. I did not count the times. Every time I make a load just a little bit smaller, without filling it in as that is described here, he tell me, "Fill your load up, half a load," and so on.

ReXQ. 20. But you don't remember whether it happened five times or six times, do you?

A. No, sir, I can't remember that.

ReXQ. 21. To your best recollection, did it happen five or six times during that time—as often as that?

A. It is impossible for me to tell how often that man had been saying that. The very moment that the slingload is not filled, he says, "Fill your load

up." "Don't send up half a load," or something like that. [88]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I, James P. Brown, a United States Commissioner for the Northern District of California, do hereby certify:

That the reason for taking the foregoing deposition in the cause in the caption in the said deposition named is that the witness August Ehler, as stated in said notice, is bound on a voyage to sea.

I further certify that on the 8th day of August, 1905, at 11 o'clock A. M. of said day, I was attended by L. T. Hengstler, Esq., of the firm of Messrs. Andros & Hengstler, proctor for the libelants, and by Nathan H. Frank, Esq., of the firm of Messrs. Frank & Mansfield, proctor for the respondents, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth; that said deposition was, pursuant to the stipulation of the proctors for the respective parties hereto, taken in shorthand by Clement Bennett, and afterwards reduced to typewriting; that the reading over and signing of the said deposition by the witness was, by the aforesaid stipulation expressly waived.

Accompanying the deposition and annexed thereto and forming a part thereof is an exhibit which was drawn and used by the witness in connection therewith and referred to and specified therein.

I further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the United States District Court for the Northern District of California, the court for which the same was taken. [89]

And I further certify that I am not of counsel, nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

IN TESTIMONY WHEREOF, I have hereunto subscribed my hand, at my office in the City and County of San Francisco, State of California, this — day of August, 1905.

JAS. P. BROWN.

United States Commissioner, Northern District of California, at San Francisco.

LIB.'S EXH.

[Endorsed]: Filed August 18, 1905. Jas. P. Brown, Clerk. [90]

In the District Court of the United States in and for the Northern District of California.

No. 13,310.

DAVID JAMES FLYNN et al.,

Libelants,

vs.

CHARLES E. SUDDEN et al.,

Respondents.

Deposition of Charles J. Baker, for Libelants.

BE IT REMEMBERED that on Wednesday, the 22d day of October, 1919, pursuant to the notice hereunto attached, at the office of Messrs. Westervelt & Ball, at Room 525 Citizens National Bank Building, in the city and county of Los Angeles, State of California, personally appeared before me me Harry K. Sargent, a Notary Public in and for the County of Los Angeles, State of California, Charles J. Baker, a witness produced on behalf of the libelants in the above-entitled matter.

APPEARANCES:

EVERETT L. BALL, Appeared for Messrs. Andros & Hengstler, as Proctor for the Libelants and NATHAN H. FRANK, Esq., Appeared as Proctor for the Respondents.

And the witness having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, in the cause aforesaid, did thereupon depose and say as is herein-after fully set forth; that said testimony was taken in shorthand by Edna J. Olive, she [91] being first by me duly sworn to truly and correctly record said testimony in shorthand and reduce the same to writing, and said Edna J. Olive took down said testimony in shorthand.

Mr. CHARLES J. BAKER called for libelants.
Witness sworn.

(Deposition of Charles J. Baker.)

Direct Examination by Mr. EVERETT L. BALL.

Q. What is your name? A. Charles J. Baker.

Q. What is your business? A. Lumberman.

Q. How long in the lumber business?

A. Twenty-seven years.

Q. During that time you have been continually in that business? A. Nothing else.

Q. What have your duties been confined to during that period of time?

A. You mean from the beginning to now?

Q. Generally—yes. A. I tallied lumber.

Q. You are familiar with the methods used in discharging a cargo of lumber, are you Mr. Baker?

A. Yes, I am.

Q. Where were you working in August, 1903?

A. San Pedro Lumber Yards.

Q. Who were you working for there?

A. For the San Pedro Lumber Company. [92]

Q. Do you remember the occasion of the accident that occurred in San Pedro on or about August 3d, 1903, in which Mr. Flynn was killed?

A. Yes, sir.

Q. Was a vessel discharging at San Pedro at that time on which Mr. Flynn was working?

A. I guess there was—I remember although I was not personally acquainted with Mr. Flynn at the time—many vessels discharging—

Q. Do you remember a vessel by the name of "Sophia Christensen"? A. Yes. sir.

Q. Was lumber being discharged from this vessel. A. Yes, sir.

(Deposition of Charles J. Baker.)

Q. Did you notice the method used for discharging lumber from this vessel?

A. They used rope slings.

Q. What sort of power did they use?

A. Steam.

Q. Donkey-engines? A. Donkey-engines.

Q. What was the character of the lumber being unloaded? A. You mean the size?

Q. Yes.

A. If I remember right they were two by twelves.

Q. That is what is known as mine timber?

A. I could not say if they were mine timber—they were two by twelve—the size not the length—two inches [93] by twelve inches wide.

Q. Do you know the length of the lumber—approximately?

A. Well—all lengths—they ran from ten to twenty-four feet—longer sometimes.

Q. How were the loads made up?

A. They stacked them up—maybe fifteen—maybe twenty—planks, I think—they swung them up, put a sling around them and hoisted them up.

Q. What was the character of the sling used—a rope sling? A. Yes—a rope sling.

Q. How long was the rope sling?

A. I never measured any in my life—I can't tell you approximately—maybe ten or twelve feet long and maybe longer—I don't know how long they are.

Q. How was the rope sling fastened on the lumber, if you recall?

A. That is a pretty hard matter to recall—now

(Deposition of Charles J. Baker.)

remember I am making a sworn statement and it's sixteen years ago—but you wish me to tell—

Q. Yes—what is your best recollection?

A. I think they just took one turn around the stack—one eye through the other—two eyes on the sling.

Mr. FRANK.—I object to the witness stating what he thinks.

Q. What we ask is what is your best recollection?

A. Well, that is the way I remember—it is too long ago to remember.

Q. Your best recollection is that there was just one turn? [94]

A. Best recollection I have.

Q. Now, where were you when this accident took place?

A. Now, that is where you stick me, gentlemen,—you see I am not sure on that,—for safety's sake a fellow must stand away from the deck at least forty feet—the very least calculation—and then you watch them and step back further and they land on the dock and you stand so to give men room to pack it off—that is one mode—and then there are ways they land a load right on to a truck and shove it away back alongside a pile and unload it there—another follows that truck and loads up—and so on.

Q. What method were they using here?

A. I don't know—I don't remember, Mr. Buckley probably can tell you—he was foreman in the yard.

(Deposition of Charles J. Baker.)

Q. Did you see the accident?

A. I could not possibly see it—even if I had followed the load back.

Q. When was it first called to your attention?

A. Well—general commotion, you know.

Q. About what time of day was that?

A. I could not tell that—I don't know whether forenoon or afternoon—not to swear to it—I don't know.

Q. What is your recollection?

A. I have no recollection on that point.

Q. When you heard that an accident had occurred—what did you do?

A. Ran to the edge of the wharf to the vessel to see what was going on. [95]

Q. What did you see?

A. That is a hard one again.

Q. You saw Mr. Flynn?

A. Let me tell you now—I want to be careful about this thing—right close by the hatch, we call it the main hatch, I think it was, I think they took a man and led him back to what the sailors call the poop, the raised part of the hind end of the vessel—where the cabin is, I know the man was hurt.

Q. Did you see him?

A. I think I saw him—yes.

Q. What was he doing when you saw him?

A. They led him back there—I think two men had hold of him and led him back to the poop deck.

Q. They led him back?

(Deposition of Charles J. Baker.)

A. Yes—had hold of him—sat him back there on the raised part of the poop deck.

Q. Did you notice anything about the character of his wounds?

A. No, I did not go on board the vessel.

Q. Did you hear the conversation while he was talking? A. I heard nothing said.

Q. Anything said about the character of slings used? A. Not that I know of.

Q. Did any of the workmen say anything to you about the character of the slings used?

Mr. FRANK—Objection—Mr. Ball, that is incompetent—hearsay. [96]

Q. Did anyone to your knowledge make any objection to the captain or the mate of the ship—I will change that. Did you hear any member of the crew make any objection to the character of the rope sling used in the unloading of this lumber?

Mr. FRANK.—Same objection—immaterial—and calling for hearsay.

A. I don't remember hearing anything.

Q. Did you ever make any statement to that effect?

Mr. FRANK.—I object to that.

A. I could not recall that—I do not know.

Q. What were the character of the slings used after the accident?

Mr. FRANK.—Also objected to on the grounds that it is immaterial.

A. I don't know as they made any change.

Q. Is it not a fact that they used chain slings?

Mr. FRANK.—I object to that.

(Deposition of Charles J. Baker.)

A. I don't know.

Q. Did you hear any statements made at the time as to how the accident occurred?

Mr. FRANK.—Same objection—immaterial.

A. I will say, Mr. Ball, everybody was talking at the time.

Q. I want you to state what conversation you heard immediately after the accident.

A. Don't remember a word about it. [97]

Q. Don't remember anything about what was said at the time? A. No.

Q. Did anyone tell you that a man was hurt?

A. I knew that—I found that out myself.

Q. Did anyone state how it occurred?

A. No—I don't think I had to ask because I imagined that part of it.

Q. Did you see any pieces of lumber lying on the ship that struck this man? A. Yes, I did.

Q. How did you know they struck him?

A. I did not know that—you asked me if I saw any lumber on the deck.

Q. Did you hear anyone say this man was struck by lumber or not?

A. I would not say I did.

Q. How did you know it?

A. My own imagination—common sense—would tell me.

Q. We want to know how you arrived at the conclusion that this man was struck by a piece of lumber—what is your answer?

A. Under my conclusions nothing else could hurt

(Deposition of Charles J. Baker.)

him—I don't know how to express it—I came to the conclusion.

Q. Is it not a fact that someone told you?

A. I don't know—someone might have—sixteen years ago—I would not know a single man who worked there except the man with me.

Q. You do know that rope slings were used? [98]

A. I know that.

Q. And according to your best recollection one turn taken on the lumber? A. Yes.

Q. What was the character of the ropes—new or old?

A. I would not like to swear to that but I think they were new, possibly.

Q. New—possibly new?

A. Yes—possibly new.

Q. In view of your experience in loading and unloading lumber and your familiarity with the loading and unloading of lumber, do you think the slings used in this case were safe slings?

A. As to their strength?

Q. As to their general qualifications as to holding lumber as to their safety?

A. There is the point—I think in my mind the best way is to take two turns around the load.

Q. What other slings are used—other than rope?

A. Chain and wire slings.

Q. Why do you reach the conclusion that two turns should be taken rather than one turn?

A. It binds the load together and prevents it from slipping.

(Deposition of Charles J. Baker.)

Q. Prevents the pieces of timber from slipping out of the load? A. Yes.

Q. Was any contraption or arrangement made to prevent the load from swinging back on the vessel after it had gotten onto the wharf in this case? [99]

A. I don't remember any.

Q. You are familiar with what they call the Spanish burton?

A. I don't exactly know what you mean—but they sometimes have the rope leading to the fore-rigging that prevents it from swinging back.

Q. They did not have anything of that character in use at the time they were unloading this lumber?

A. I do not remember.

Q. Do you know whether the load did swing back in this case—being unloaded at the time Mr. Flynn was killed?

A. I do not know whether I was in the back or in the front—I am not sure—but I am sure it swung back.

Q. According to your best recollection that's the way it occurred? A. If you please.

Q. According to your best recollection a stick of timber fell from that load as it swung back?

A. That's my impression.

Q. Any timber fall in the water?

A. That is liable to be the case,—my best recollection of it—the slingload came out as usual, you know (gesturing), and some of the timbers fell out and naturally the rope got loose—and the load got lighter—and as the heavy load came out on the boom

(Deposition of Charles J. Baker.)

it balanced the vessel over, and immediately it lightened up the vessel went back again—and three or four planks hanging loosely came down—whether someone told me or whether I saw it—I would not swear as to that. [100]

Q. But you do know that you either saw it yourself at the time or someone told you about it at the time? A. Yes.

Q. Do you remember who you talked to at the time? A. No.

Q. If you were told how this accident occurred you were told immediately after the accident or just at the time it occurred?

A. I suppose I had been told a half a dozen times. You know how it is—when it happens everybody talking and tells what they know and you are liable to hear two or three different stories or more.

Q. Do you know Mr. Butler—foreman in the yard? A. You mean—Buckley?

Q. No—Butler?

A. Mr. Buckley was the foreman in the yard.

Q. In the yard at the time? A. Yes, sir.

Q. Do you know a man by the name of Butler foreman of the yards? A. No.

Q. You may take the witness.

Cross-examination by Mr. FRANK.

Q. Mr. Baker, do you know where Mr. Flynn was at the time this accident happened—on the vessel or on the wharf? A. I know he was on the vessel.

Q. What doing on the vessel—do you know that?

A. Slinging lumber. [101]

(Deposition of Charles J. Baker.)

Q. In other words, he was making up these slings?

A. Making up the loads for the slings.

Q. In other words, it was his duty to put those slings on the load itself? A. Yes.

Q. And that was the duty he was performing at this time?

A. Yes, that was what he was doing at that moment. I know he was working on the vessel as a longshoreman, naturally he was making up sling-loads, that is the only work he could find there in that capacity.

Q. Do you recall how long the vessel had been discharging in that way before the accident happened?

A. No, sir; I could not.

Q. Had much of the cargo been discharged?

A. The deckload was almost all off and I think they were breaking in the hatch.

Q. Do you remember how high a deckload she had at that time?

A. When she started to discharge—to the best of my recollection I think she had a full load on and those deckloads run twelve feet high.

Q. The least calculation—and the full length of the vessel, too? A. Yes, sir.

Q. Do you recall whether they had been discharging one, two or three days?

A. Well—take them at least two—maybe three—days to get that amount of lumber off.

Q. Were you in attendance from the beginning of the discharge [102] of that lumber as tallyman?

A. To the best of my recollection I was.

(Deposition of Charles J. Baker.)

Q. This is the first slingload that slipped—is it not? A. I do not remember of any others.

Q. Had you been alongside many vessels discharging lumber previous to that—rather had you discharged many vessels previous to that?

A. Done nothing else, sir.

Q. Do you know whether or not it was a common practice to discharge lumber in the way this lumber was being discharged? A. You mean—how?

Q. With a rope sling and with a single turn around through the eye on the end of the sling?

A. You want to know if that was a common way?

Q. A common way of doing it at that time?

A. Don't know how to answer that—he was—of course—some vessels do one way—some another—depends on the captain—sometimes the captain has nothing to do with it and it depends on the mate—on second thought—it is the mate's outlook—and the captain has business on shore.

Q. In other words, it is the mate's business to superintend the discharge?

A. Yes, and they always do.

Q. The mate was in charge at this time, was he not? A. Yes.

Q. To get back to the other proposition—I was speaking of—vessels discharge—rather—you have known vessels [103] to discharge during your experience frequently with a sling of this sort?

A. Yes; both ways.

Q. This as well as the other was a common practice?

(Deposition of Charles J. Baker.)

A. I would not say common practice. In my own mind—I do not think it the safest way.

Q. I am not interested in what you think is safe or unsafe, but the question I will ask now is whether or not that was a usual and common mode of discharging lumber?

A. They unload lumber in that way.

Q. That is not exactly an answer to my question, Mr. Baker. Was it usual and common to unload it that way?

A. I am not in that capacity to say—one way was used as often as the other.

Q. They used that way as often as the other?

A. Yes—we took the lumber and as long as nothing happened it was all right.

Q. Your experience and observation, as I understand, is that in the discharge of lumber they used this method as often as they used any other method—is that right?

A. As near as I can say it—I do not know how to answer that accurately—I am not in a position to tell.

Q. Have you any observation on the subject?

A. Sometimes we might not know whether they was a one turn or two turns—we do not pay any attention to that part—we are pretty busy when we tally lumber but when something happens everybody hollers, "You did not do this or you did not do the other thing." [104]

Q. When the slingload comes ashore it comes ashore with the sling round it? A. Yes.

(Deposition of Charles J. Baker.)

Q. And you are standing there and you see it?

A. Yes.

Q. Now, are you not in a position to say whether or not the practice of the sling with one turn is used quite as much as the practice with two turns?

Mr. BALL.—I object to that question in its present form for the reason that you have not identified the character of the lumber—I think if you will make it more specific.

Mr. FRANK.—I am satisfied with the question.

Mr. BALL.—I make the further objection that it is incompetent, irrelevant and immaterial.

A. I am not.

Q. Are you in a position to say that it is not used quite as often as the one with two turns?

A. I am not that sure—have you not many times seen things and the next moment they come out of your mind—I would not like to be obliged to say.

Q. In other words, you would not like to say it is usual or unusual?

A. I do not like to say—I am sworn—and I want to be fair. [105]

Q. However, as far as your experience goes the single turn with a rope sling is frequently and often used in the discharge of cargo?

A. Yes—it is used.

Q. Now, I understood you to say in your direct examination that these slings may be ten or twelve feet long—maybe longer—you do not know?

A. I am not sure.

(Deposition of Charles J. Baker.)

Q. Your impression is that ten feet or twelve feet is the usual length?

A. That's the way it looks to me—I never measured one.

Q. Do you know whether during the entire discharge of that cargo both before the accident and after the accident a Spanish burton was used?

A. I do not remember.

Q. Do you know whether or not any slingload other than this one, if this one did swing back, swung back on to the vessel?

A. You want to know if any other slingloads beside this one that I think swung back?

Q. Yes. A. No, I do not remember.

Q. And as a matter of fact, you don't know whether this one swung back except that you judged that it did?

A. To the best of my recollection I judge it swung back.

Q. You have no recollection on the subject at all, have you, Mr. Baker?

A. I have the outlines. [106]

Q. What do you mean by "have the outlines"?

A. Main facts.

Q. Well, I know, but this is a distinct fact that you should or should not have a recollection of—according as the thing lays in your mind—now—have you a recollection of seeing it swing back at all?

A. No, sir.

Q. You only judge that it may have swung back?

A. Yes, sir.

(Deposition of Charles J. Baker.)

Q. How wide did you say these planks were—twelve inches? A. Twelve inches.

Q. I think that is all.

Redirect Examination by Mr. BALL.

Q. You stated in your cross-examination, Mr. Baker, that you could not say definitely whether or not the method of discharging lumber by a single turn with a rope sling was or was not a common practice.

A. That's what I said.

Mr. FRANK.—I don't think he said that.

Mr. BALL.—I am examining him—you may ask him questions again.

Mr. FRANK.—I think he said it was as common as any other practice.

Redirect Examination Continued by Mr. BALL.

Q. When you are discharging lumber that is two by twelve in dimensions of indeterminate length, can you say that the use of the rope sling with one turn is a common practice?

A. I cannot say that is a common practice. [107]

Q. Have you discharged any lumber in the past week?

A. I have not discharged any lumber for years now.

Q. Have you observed any discharge of lumber in the last week? A. No, sir.

Q. How long has it been?

A. I have not been tallying lumber for a number of years.

(Deposition of Charles J. Baker.)

Q. Would you say that when you were discharging large heavy timbers such as those that were discharged here that the use of the rope sling with a single turn, using a new rope, was a common practice?

A. I don't say it is a common practice—I am no judge—I say they do it one way as often as the other—I am no judge.

Q. You say you are no judge?

A. I don't say one or the other is a common way—one vessel does one way and one does the other—this common practice question is not fair to me as I am in no position to judge—I do not know—I am in no position to say it is a common practice. Of course I would not say it is common or uncommon—I never kept tab on it one way or the other.

Q. But from your experience I understand you to say that you don't consider the use of the single sling is the safe way of discharging lumber?

Mr. FRANK.—We object to his opinion as to whether it is safe or unsafe on the ground that it is unsafe.

A. My candid opinion is that it is not a safe way and if it was my vessel I would make them take two turns. [108]

Q. Your reasons for that are what?

A. I think it is not safe—the lumber is apt to slip out.

Q. You found that opinion on the fact that you have been connected with the discharge of lumber for a great many years?

(Deposition of Charles J. Baker.)

A. Yes, I have had experience in that line—I see things.

Q. You are acquainted with the various methods of discharging lumber?

A. I have seen lots of it.

Q. Now, you testified in your cross-examination that you had no recollection of any lumber having fallen out of this load prior to this slingload—are you sure of that?

A. I don't remember any of that.

Q. Is it not a fact that some lumber fell out of the slingload the day before this accident occurred?

A. I can't tell.

Q. It might have fallen out and you were not in a position to observe it?

A. Yes, it might happen, too.

Q. That's all.

Recross-examination by Mr. FRANK.

Q. I understand you—that in making up these slingloads the mate has charge of the method and determines whether there shall be one or two turns?

A. No, sir. The mate has charge of the vessel during the unloading but whether he will bother his head about how many turns—I don't know. [109]

Q. Would the man himself who was making up the slingload determine that?

A. Somebody would have to.

Q. It's one or the other—the mate or the man who is making up the slingload?

A. One or the other—the mate is the boss at the time.

(Deposition of Charles J. Baker.)

Q. That's all.

Redirect Examination by Mr. BALL.

Q. The mate provided the slings, did he not?

Mr. FRANK.—I object.

Q. Do you know who provided the slings?

A. No.

Q. Would it have been possible to have taken two turns on the slingloads or lumber as discharged from this vessel with slings the length of the slings used in this case?

A. It all depends upon how big the slingload is—I stated fifteen to twenty planks—if fifteen planks thirty inches on each side and one foot across—be five or seven feet—if the sling had been twelve feet long there would not have been enough left to go around once again—but remember I do not know how long the sling was—I don't know.

Q. What is your best recollection?

A. I told you it might be ten or twelve feet long—might be eighteen.

Q. That's all.

Witness excused.

(Signed) CHARLES J. BAKER. [110]

State of California,

County of Los Angeles,—ss.

I, Harry K. Sargent, a notary public in and for said county and state, do hereby certify that the witness Charles J. Baker, in the foregoing deposition named, was by me duly sworn to testify the truth, the whole truth and nothing but the truth in said

cause; that said deposition was taken at the time and place named in the annexed notice, to wit: at the office of Messrs. Westervelt & Ball, 525 Citizens National Bank Building, Los Angeles, California, on Wednesday, the 22d day of October, 1919, at ten o'clock of said day; that said deposition was reduced to writing by Edna J. Olive, a disinterested person, in my presence and under my direction; and when completed was by me carefully read to said witness and being by him corrected was by him subscribed in my presence.

IN WITNESS WHEREOF I have hereunto subscribed my name and affixed my official seal this 10th day of November, 1919.

(Signed) HARRY K. SARGENT, [Seal]
Notary Public in and for the County of Los Angeles,
State of California. [111]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 13,310.

DAVID JAMES FLYNN et al.,

Libelants,

vs.

CHARLES E. SUDDEN et al.,

Respondents.

**Notice of Taking Depositions of J. W. Buckley and
Charles Baker.**

To Respondents Above Named and to Messrs. Frank and Mansfield, Their Proctors:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that J. W. Buckley and Charles Baker, whose testimony is necessary in the above-entitled cause, and who reside more than one hundred miles from the place of trial of the above-entitled matter, and who are without the Northern District of California, will be examined *de bene esse* as witnesses on behalf of the libelant in this cause before Harry K. Sargent, a notary public in and for the city of Los Angeles, State of California, not being of counsel or attorney to either of the parties above named, nor interested in the event of the cause, at the office of Westervelt and Ball, No. 525 Citizens National Bank Building, Los Angeles, California, on Wednesday, the 22d day of October, 1919, at 10 o'clock A. M. of said day.

Dated: October 8th, 1919.

(Signed) ANDROS & HENGSTLER,
Proctors for Libelant. [112]

Endorsement on back of notice of taking depositions:

Receipt of a copy of the within Notice, etc., is hereby admitted this 8th day of Oct., 1919.

(Signed) NATHAN H. FRANK,
(Signed) IRVING H. FRANK,
(Signed) FRANK & MANSFIELD,
Proctors for Respondent.

[Endorsed]: Filed Jul. 20, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [113]

In the District Court of the United States in and for
the Northern District of California.

No. 13,310.

DAVID JAMES FLYNN et al.,

Libelants,

vs.

CHARLES E. SUDDEN et al.,

Respondents.

Deposition of J. W. Buckley, for Libelants.

BE IT REMEMBERED that on Wednesday, the 22d day of October, 1919, pursuant to the notice hereunto attached, at the office of Messrs. Westervelt & Ball, at Room 525 Citizens National Bank Building, in the city and county of Los Angeles, State of California, personally appeared before me, Harry K. Sargent, a notary public in and for the county of Los Angeles, State of California, J. W. BUCKLEY, a witness produced on behalf of the libelants in the above-entitled matter.

APPEARANCES:

EVERETT L. BALL, Appeared for Messrs. Andros & Hengstler, as Proctor for the Libelants, and NATHAN H. FRANK, Esq., Appeared as Proctor for the Respondents.

And the witness having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid, did

(Deposition of J. W. Buckley.)

thereupon depose and say as is hereinafter fully set forth; that [114] said testimony was taken in shorthand by Edna J. Olive, she being first by me duly sworn to truly and correctly record said testimony in shorthand and reduce the same to writing, and said Edna J. Olive took down said testimony in shorthand.

Mr. J. W. BUCKLEY called for libelants.

Witness sworn.

Direct examination by Mr. BALL.

Q. Your full name is what?

A. John W. Buckley.

Q. Where do you reside? A. San Pedro.

Q. What is your age? A. Fifty-four.

Q. How long have you resided at San Pedro?

A. Since eighty-seven.

Q. What is your business, Mr. Buckley?

A. I am a lumberman.

Q. What were you engaged in during the year 1903?

A. I don't remember that year—but I have been—I was foreman for the San Pedro Lumber Company from eighteen ninety-eight until this year,—nineteen nineteen,—up to the first of June—at that time I was foreman.

Q. Do you remember whether a steamer or schooner by the name of "Sophia Christensen" was unloading lumber about August, nineteen hundred and three at San Pedro? A. Yes, sir.

Q. What were your duties in reference to the unloading of lumber at that time? [115]

(Deposition of J. W. Buckley.)

A. Well, I was general foreman of the yard.

Q. And as general foreman you had charge of the unloading of the lumber, did you?

A. I do not know as you would call that a part of my work at the time I received the lumber.

Q. You had charge of the receiving of the lumber and placing it on the wharf? A. Yes, sir.

Q. You were familiar with the method of discharging lumber at that time? A. Yes, sir.

Q. Will you state just what method was used at that time in discharging the lumber of this vessel.

A. At that time that boat had what we call mining lumber that consisted of two by twelves up to twelve by twelves.

Q. What length?

A. Ran from ten feet to twenty-four feet long.

Q. Now, go ahead and state just how this was unloaded.

A. To get the work done properly—I had them sling the different kinds of lumber separate as much as possible so we could land them on the truck and then take them further out and pass them on to another truck until we got such size loads as were suitable for us to haul away to take to the cars to ship.

Q. You recall the accident that occurred there?

A. Yes, sir.

Q. When a man named Flynn was killed?

A. Yes, sir. [116]

Q. What type of lumber were you loading at that particular time?

A. This slingload that was connected with Mr.

(Deposition of J. W. Buckley.)

Flynn's death was a load of two by twelve.

Q. And do you remember the length?

A. Not exactly. They come assorted—different lengths.

Q. Just how were these loads—slingloads of two by twelve made up?

A. The men on the boat have a short block about two feet long, usually four by four, and the long-shoreman—one on each end of the plank, will place it on this block until they get it of sufficient size to put the sling on to it.

Q. How wide would this load be? One plank or two planks wide?

A. It varies usually. Where two by twelves are used usually two would be a fair-sized load—this load in particular I do not remember how wide it was—one tier or two tiers.

Q. According to your best recollection can you say whether the loads of two by twelves were made in two tiers or one tier at that time?

A. If they were making them too small I would criticise them and ask them to make them larger.

Q. Then it is your best recollection that they were two tiers—what is your best recollection?

A. Really, I could not say—I don't want to say when I can't remember that load.

Q. After the loads were made up what was the character of [117] the sling used at this time?

A. A rope sling.

Q. New ropes or old ropes? A. New ropes.

Q. Was one turn taken or two turns?

(Deposition of J. W. Buckley.)

A. One turn.

Q. Was that sling long enough to have made two turns on the size of the piles?

A. In this case they were not.

Q. According to your best recollection what was the length of the slings?

A. They were not long enough to make two turns—I will tell you why I remember that—I saw what they were doing—making one turn—and I asked them to make the second turn or get chain slings.

Q. Who did you ask that?

A. Either—the mate or captain—this is so long ago it has gotten out of my head, but I asked someone there—the mate or the captain—Captain Hansen—

Q. Go ahead.

A. Well, they told me the sling was not long enough—I had them try it and it would not go around the load when they first started—that is—the second turn would not go around the load.

Q. And you did not want to get your men hurt on the wharf?

A. That's what I told the mate or captain.

Q. What did they say?

A. They tried to get it around but it would not reach and [118] then they used one turn.

Q. Did they say why they did not get the chain sling?

A. I do not remember whether they had them or not—I do not know.

Q. About what time of day was it when this accident occurred?

(Deposition of J. W. Buckley.)

A. I can't recall the time of day.

Q. Do you recall about how long the vessel had been discharging lumber prior to the accident?

A. I would judge two days because the boat—the deck was lowered considerable at the time Mr. Flynn was hurt.

Q. Where were you when the accident occurred?

A. On the wharf.

Q. You were in a position where you could see the accident? A. Yes, sir.

Q. Did you see it? A. Yes, sir.

Q. Will you state just how it occurred.

A. This load was taken up by the hoist—as it was being taken up it slipped out of the sling. Mr. Flynn at the time was making a load on one of these blocks about the center of the ship—one or more of these planks hit Mr. Flynn on the head.

Q. Had the load come up to the wharf?

A. Not in my memory.

Q. Had any lumber fallen into the water prior to the accident or was it just immediately following?

A. I cannot say that. [119]

Q. According to your best recollection the load came over?

A. As it was being hoisted some of it fell and struck Mr. Flynn.

Q. About what length of time does it take to hoist a slingload and land it on the wharf and go back for another slingload—approximately?

A. A boat like that at that time was averaging about ten thousand feet an hour.

(Deposition of J. W. Buckley.)

Q. It took three shifts, if I understand, and you had six men unloading—is that right?

A. About that.

Q. And two working together? A. Yes, sir.

Q. These six men, two working together, could make the slingloads just about as fast as they were being unloaded? A. Yes, sir.

Q. Do you know whether or not they would have to wait for the hook to come back after they made the load?

A. The way that work is done—the hook goes round in rotation—the first two men will have their load hooked on—two get the next load and then two the next—most of the time the load is ready for the hook—most of the time,—and if their load is ready they will sit on the load and wait until the hook comes to them.

Q. Do you recollect whether Mr. Flynn's load was the one next to the one being unloaded?

A. No, sir. Mr. Flynn's load was being made up at the time. [120]

Q. What happened immediately after the accident?

A. Myself, the mate and the sailors took him to the—what they call the poop deck—the one where the cabin is—and we sat there a short time and talked—he did not talk rationally although he knew he was hurt.

Q. Mr. Flynn?

A. Yes—and shortly after he was taken home.

Q. Do you remember anything he said?

(Deposition of J. W. Buckley.)

A. I do not—he said—yes—he expressed a desire to go to work, in an offhand way.

Q. Where was he struck by the timber?

A. Some place on the head.

Q. Did you notice whether it made a gash?

A. No, I did not.

Q. Do you know when he died?

A. No—I cannot remember definitely when he died.

Q. You know he did die? A. Yes, sir.

Q. Your experience in discharging lumber covered a great many years, did it not? A. Yes, sir.

Q. And you are very familiar with the methods used in discharging lumber? A. Yes, sir.

Q. From your experience and knowledge of the discharging of lumber from vessels, would you say that the use of new rope with single sling on lumber of the kind being discharged here was a safe and proper way to discharge it? [121]

A. It is not safe—that is—with the one turn.

Q. And you so told the captain or the mate of the vessel? A. Yes, sir.

Q. Do you know whether or not rope slings were used after the accident? A. I could not say.

Q. Do you know whether chains—chain slings were used? A. I could not say that.

Q. Did you remonstrate either with the captain or mate in regard to the sling used?

A. Well—I criticised them, of course, gave them fits.

Q. Did you refer to the fact that you had told

(Deposition of J. W. Buckley.)

them about this? A. Yes, sir.

Q. Do you remember what he said?

A. No, sir—I don't.

Q. You are acquainted with what is commonly known as a Spanish burton?

A. I don't know what that means.

Q. There are certain arrangements which must be made to prevent a load of lumber from swinging back on the vessel after it starts on the wharf, are there not? [122]

A. To prevent it from going back?

Q. Yes—after it has started off the vessel to the wharf—is there any arrangement that can be made to prevent the load from again swinging back onto the vessel? A. I could not answer that.

Q. You don't know of any arrangement that was used in this instance to prevent the load from swinging back?

A. The weight of the load being taken out as it was at that time keeps it on the wharf and when it is released the boom goes back.

Q. If all of the load except two or three pieces were to fall out after it got over on the wharf—or near the wharf—and only two or three pieces remained—that would have a tendency to throw the remaining part of the load back?

A. I think if it was quite light it might go back.

Q. Do you recollect whether or not any timber fell from any loads prior to this load? A. No, sir.

Q. You could not say whether some fell the day before or not? A. No.

(Deposition of J. W. Buckley.)

Q. Do you know of any Mr. Butler who was master of the San Pedro Lumber Company at that time?

A. Master of the San Pedro Lumber Company?

Q. You do not know of anyone?

A. Closest to it is my name—Buckley,—they call me Butler—some of the captains do—you no doubt have reference to me. [123]

Q. Any reference to Mr. Butler as master of the San Pedro Lumber Company would, in your opinion, be in reference to you as you were sometimes called that? A. Yes, sir.

Q. Did Mr. Flynn have his back to the load when it fell, or was he facing it?

A. He was stooping over with his face down loading the lumber on this block at the time, and he could not see it.

Q. By it you mean the slingload above him?

A. Yes.

Q. That's all—you may take the witness.

Cross-examination by Mr. FRANK.

Q. Mr. Butler, was Mr. Flynn working for you at the time? A. No, working for the vessel.

Q. Who was his foreman?

A. The mate or captain usually hired the men on the boat that were doing what they call longshoreman work.

Q. Then really the mate was his foreman at that time? A. Yes, sir.

Q. And he was working now—his part of the work of discharging the vessel—just the same as a member of the crew would be working? A. Yes, sir.

(Deposition of J. W. Buckley.)

Q. In other words—the longshoreman who goes on board to discharge is in the same relation to the mate as a member of the crew is in discharging?

A. That is my opinion. [124]

Q. That is a fact, is it not?

A. He or the captain hires him and he is working for the boat.

Q. And the mate oversees that work?

A. Yes, sir.

Q. Now, when a sling is made up with a single turn it is usually a common practice, is it not, to have a stick and pound the sling down at the end where the rope runs through the eye down onto the load—is it not?

A. Very little unloading is done with one turn around the load.

Q. That is not an answer to my question, Mr. Buckley, when it is done it is the practice to hammer down the end onto the slingload, is it not?

A. Naturally a man would do that.

Q. That is the proper practice, is it not, in order to make it bite on to the load?

A. I do not know as that is the common practice.

Q. Do you know anything about it?

A. To hit it with a stick to tighten it up? I cannot recall of people hammering the sling with a stick because I have seen very little of that.

Q. It would be a proper mode, would it not?

A. It would be a proper thing to do.

Q. And when so done it holds the slingload tight and prevents it from slipping, does it not?

(Deposition of J. W. Buckley.)

A. In my judgment—not with one turn.

Q. Why not?

A. Because there is too little resistance with one turn— [125] even though tightening it with a club.

Q. How many feet from the end of the slingload is the sling usually placed?

A. Well, take as an example, a load that would average sixteen feet—about seven feet from one end.

Q. Then it would have to slip all of seven feet before it would be hoisted? A. Yes, sir.

Q. Now, when it is hammered down on the load, why would not there be sufficient friction to prevent it slipping seven feet?

A. I cannot see my way clear to answer that question because I do not think that hammering the load down has a proper tendency to tighten the load sufficiently.

Q. Now, is it not quite as common to discharge with a rope with a single turn as it is by other means?

A. No, sir.

Q. You mean to say you have never seen it done before or since?

A. Once in a while—it depends on the kind of lumber—you take shingles and lathes and those things—they do it—but in long lumber it is a dangerous move to make to attempt it with a rope sling.

Q. They had, however, been doing that for two or three days before this accident?

A. About two days.

(Deposition of J. W. Buckley.)

Q. And Mr. Flynn had been working there all that time? A. Yes, sir. [126]

Q. He was perfectly familiar with the operation and all that was going on? A. I guess he was.

Q. Had you known him before this occasion—on the front down there? A. Yes, sir.

Q. He had frequently discharged similar lumber?

A. Yes, he had worked on the docks.

Q. In the same capacity?

A. Yes, as a longshoreman.

Q. Now, to whom did you speak—you said to someone—was it the captain or mate?

A. No, sir—I do not know—it was one or the other.

Q. That's all.

Redirect Examination by Mr. BALL.

Q. Do you know who was in charge of the vessel or rather who was in charge of the discharging of lumber from the vessel—what officer was in charge of that work?

A. The mate is always in charge of unloading a vessel.

Q. Do you remember the name of the mate of this vessel? A. No, sir.

Q. This slingload that hit Mr. Flynn was not a load that he made up himself?

A. I would not say that.

Q. If he was making a load at the time and was lifting a plank and had his back to the load—is it likely that it was his load? [127]

Mr. FRANK.—I object to that on the ground that

(Deposition of J. W. Buckley.)

it is argumentative and the Court can draw its own inferences.

Mr. BALL.—I withdraw that question.

Q. After a load was prepared by one of the long-shoremen did they watch the load until it reached the dock, or did they immediately proceed to build another load?

A. In this case I do not know what they did, but I can tell you what is customary.

Mr. FRANK.—I object to that.

Q. What is customary?

A. They will see the load leave—they start it toward its destination—then follow their regular work.

Q. According to your best recollection, is that what was done at this time? A. I could not say.

Q. Mr. Flynn was a strong and healthy man—was he not?

A. Yes—I would judge he was about forty-one or forty-two years of age—I would take him for a man of that age at that time—as far as I can remember.

Q. He had not been sick prior to that time?

A. Not that I know of.

Q. He was not injured in any other way than by the blow on the head by this timber falling?

A. That's all I saw.

Q. You don't know of anything else?

A. No, sir.

Witness excused.

(Signed) JOHN W. BUCKLEY. [128]

State of California,
County of Los Angeles,—ss.

I, Harry K. Sargent, a notary public in and for said county and State, do hereby certify that the witness John W. Buckley, in the foregoing deposition named, was by me duly sworn to testify the truth, the whole truth and nothing but the truth in said cause; that said deposition was taken at the time and place named in the annexed notice, to wit, at the office of Messrs. Westervelt & Ball, 525 Citizens National Bank Building, Los Angeles, California, on Wednesday, the 22d day of October, 1919, at ten o'clock of said day; that said deposition was reduced to writing by Edna J. Olive, a disinterested person, in my presence and under my direction; and when completed was by me carefully read to said witness and being by him corrected was by him subscribed in my presence.

IN WITNESS WHEREOF I have hereunto subscribed my name and affixed my official seal this 10th day of November, 1919.

(Signed) HARRY K. SARGENT, [Seal]
Notary Public in and for the County of Los Angeles,
State of California. [129]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 13,310.

DAVID JAMES FLYNN et al.,

Libelants,

vs.

CHARLES E. SUDDEN et al.,

Respondents.

NOTICE OF TAKING DEPOSITIONS.

To Respondents Above Named and to Messrs. Frank and Mansfield, Their Proctors:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that J. W. Buckley and Charles Baker, whose testimony is necessary in the above-entitled cause, and who reside more than one hundred miles from the place of trial of the above-entitled matter, and who are without the Northern District of California, will be examined *de bene esse* as witnesses on behalf of the libelant in this cause before Harry K. Sargent, a notary public in and for the city of Los Angeles, State of California, not being of counsel or attorney to either of the parties above named, nor interested in the event of the cause, at the office of Westervelt and Ball, No. 525 Citizens National Bank Building, Los Angeles, California, on Wednesday, the 22d day of October, 1919, at 10 o'clock A. M. of said day.

Dated October 8th, 1919.

(Signed) ANDROS & HENGSTLER,
Proctors for Libelant. [130]
(COPY)

Endorsement on back of notice of taking depositions:

Receipt of a copy of the within notice, etc., is hereby admitted this 8th day of Oct., 1919.

(Signed) NATHAN H. FRANK,
(Signed) IRVING H. FRANK,
(Signed) FRANK & MANSFIELD,
Proctors for Respondent.

[Endorsed]: Filed Jul. 20, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [131]

In the District Court of the United States, Northern
District of California.

No. 13,310.

HONORA D. FLYNN,

Libelant,

vs.

Schooner "SOPHIE CHRISTENSEN,"

Claimant.

Stipulation re Deposition of Charles R. Woodson.

It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of Charles R. Woodson when written out may be read in evidence by either party on the trial of the case; that all questions as to the notice of the time

and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to the materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witness and the signing thereof is hereby expressly waived. [132]

In the District Court of the United States, Northern
District of California.

HONORA D. FLYNN,

Libelant,

vs.

Schooner "SOPHIE CHRISTENSEN,"

Claimant.

Deposition of Charles R. Woodson, for Libelants.

BE IT REMEMBERED, that pursuant to the notice and stipulation hereunto annexed, and on the 10th day of April, A. D. 1908, at 3 o'clock P. M. of that day, at the office of Messrs. Andros & Hengstler, in the Kohl Building, in the City and County of San Francisco, State of California, before me, Ceda de Zaldo, a notary public in and for said City and County, personally appeared Charles K. Woodson, a witness produced on behalf of the libelant in the above-entitled action, now pending in said court, who being by me first duly sworn, was then and there examined and interrogated by Louis Hengstler, Esq., proctor for libelant, and by Nathan H. Frank, Esq.,

(Deposition of Charles R. Woodson.)
proctor for claimant, and said witness testified as follows: [133]

DEPOSITION OF CHARLES R. WOODSON.

Direct Examination.

Mr. HENGSTLER.—What is your full name, Mr. Woodson? A. Charles R. Woodson.

Q. What is your age?

A. My age is twenty-eight.

Q. Your occupation? A. Laborer.

Q. Mr. Woodson, where were you engaged, August 3, 1903?

A. I was engaged in taking lumber from the schooner "Sophie Christensen" to San Pedro lumber-yard, San Pedro, California.

Q. What kind of work were you doing on the schooner at that time?

A. What they call stevedoring work here; there we call it working in the yard.

Q. Had the work something to do with the cargo or the ship?

A. Yes, sir; it was taking it away and sorting it out to go down to the yards.

Q. You were helping in the discharge of the schooner, were you? A. Yes, sir.

Q. What was the cargo of that schooner, Mr. Woodson? A. It was a mining order.

Q. What does that mean?

A. That means timbers two by twelve.

Q. How long had you been working on that schooner in the discharge, from the beginning?

(Deposition of Charles R. Woodson.)

A. Yes, sir; I was one of the first men that went out.

Q. Do you remember the occasion when an accident happened and a man by the name of Flynn was killed in discharging that schooner?

A. Yes, I remember the accident. [134]

Q. How long had you been discharging on that day, about, as near as you can remember?

A. As near as I can remember, it was about three or four days; I would not be certain.

Q. And you had been working on her from the beginning? A. From the beginning; yes, sir.

Q. Whom did you say you were working for?

A. Working for the San Pedro Lumber Company.

Q. Were you on the deck of the schooner during your work, or out on the wharf?

A. I was on the wharf.

Q. What was your part of the work in discharging?

A. Well, my part of the work was taking the lumber from the slingload and starting it out—putting it on trucks to go on the cars.

Q. When the slingloads swung out from the vessels who took the load from the sling, were you one of those? A. Yes, sir; took it from the sling.

Q. What kind of slings were used in the discharge before this accident happened, Mr. Woodson?

A. Used rope slings.

Q. Rope slings? A. Yes, sir.

Q. How long have you been working at that occupation of discharging lumber vessels?

A. I worked at it off and on for three years.

(Deposition of Charles R. Woodson.)

Q. You discharged a good many lumber vessels?

A. Yes; I helped discharge a great many.

Q. Are you familiar with the kind of slings that are used in that work? A. Yes, sir. [135]

Q. What kind of slings are they ordinarily?

A. Well, on timbers they use chain slings mostly, but sometimes they use rope and when they do that they have it long enough to make a round turn on it.

Q. Now, were the slings which were being used in discharging this vessel long enough to make a round turn? A. No, sir; they were not.

Q. How long were they?

A. Why, they were just long enough to go around it once, I should judge, about eight or nine feet.

Q. Go around the load once?

A. Yes, go around the load once.

Q. How did the length of that sling compare with the length of slings ordinarily used, in your experience?

A. Well, they were just—they ought to have been twice as long as they were; they were too short.

Q. Did you notice anything peculiar about the particular sling used when Flynn was killed?

A. I noticed it was a rope sling; that was all.

Q. Was there anything connected with it that made it dangerous besides the shortness of it?

A. Well, they were brand new slings, and of course, it was not as pliable as the others.

Q. Did you continue in the discharge of the vessel after the accident happened? A. Yes, sir.

(Deposition of Charles R. Woodson.)

Q. What kind of slings were used after the accident happened?

Mr. FRANK.—Objected to as immaterial.

A. After the accident we used chain slings.

[136]

Mr. HENGSTLER.—Q. Before the accident happened did you think anything about the nature of the sling which was being used?

Mr. FRANK.—That is entirely immaterial, what he thought about it.

A. Why, I thought it was very dangerous and kept out of the way of the loads on account of the slings.

Mr. HENGSTLER.—Q. Did you know the master of the vessel while the discharging was going on, Mr. Woodson? A. The captain?

Q. The captain, yes.

A. Well, I saw him there; yes.

Q. Did you speak to him about the kind of slings and ask him to use different slings?

A. No, sir, I did not, but Mr. Butler did.

Q. Who is Mr. Butler?

A. He is foreman of the yard.

Mr. FRANK.—Q. Did you hear Mr. Butler say it? A. Yes, sir.

Mr. HENGSTLER.—Q. You heard Mr. Butler speak to the master about the slings?

A. Yes, sir.

Q. Mr. Butler was the master of the San Pedro Lumber Company?

A. Superintendent of the yard, yes, sir.

Q. Is he still there?

(Deposition of Charles R. Woodson.)

A. Yes, he was a week ago.

Q. What did he say to the captain?

A. He told him not to use those slings; they were too short.

Q. Did you hear what the captain said in reply?

A. The captain said that is all the slings he had.

Q. Is that all the conversation that you heard between the two?

A. Well, Mr. Butler said, if you want [137] to use rope slings, why to have them longer, splice them together so he could take a round turn; they were very dangerous to use that way.

Q. Did you say anything to the captain after the accident happened, anything with reference to the slings, yourself?

A. Well, some of the men made remarks that they thought they didn't have any chain slings.

Mr. FRANK.—I object to the conversation between these men and the captain subsequent to the accident.

Mr. HENGSTLER.—Do you know whether or not the captain was present when the accident itself happened? A. He was on the boat.

Q. He was on the boat. Do you know whether he was on deck, or whether he saw the accident?

A. No, sir; I do not know.

Q. Who was in charge of the unloading of the vessel at the time, if you know?

A. The first mate.

Q. The first mate. Do you know what his name is? A. No, sir, I do not.

(Deposition of Charles R. Woodson.)

Q. How did this particular rope that produced this accident compare with the other ropes which you have seen in your experience of three years in discharging lumber vessels?

A. Well, the rope was all right, only it was too short.

Q. You say it was half as long as it ordinarily should have been?

A. It was; it should have been twice its length.

Q. You say this cargo was a mining order. What do you mean by that, Mr. Woodson?

A. It was timbers and planks, two by twelve, that go to the mine direct. [138]

Q. Is that larger or smaller than the ordinary lumber? A. It is large lumber.

Q. What is the usual kind of sling used in discharging lumber of that kind?

A. Well, the usual sling is chain.

Mr. HENGSTLER.—That is all.

Cross-examination.

Mr. FRANK.—Q. Did you see the accident, Mr. Woodson?

A. No, sir; I didn't see the accident.

Q. So, as a matter of fact, all you know about this business is that you saw some slingloads come over and that they were using ropes, and you didn't think those ropes were long enough; that is all there is about it?

A. I didn't think the ropes were long enough; no, sir.

(Deposition of Charles R. Woodson.)

Q. Who was present besides yourself when this conversation was held that you have testified to between Butler and the master.

A. Well, I don't remember who all the men were; there were two tallymen and the straw boss, and two gangs.

Q. Where was the conversation held?

A. The conversation was right on the wharf, right there at the side of the vessel.

Q. Right at the side of the vessel? A. Yes, sir.

Q. Do you know where Flynn was at that time?

A. No, sir, but he was on the dock.

Q. He was on the dock right alongside the wharf there, was he?

A. I don't know what part of the dock he was on.

[139]

Q. The conversation was held right alongside the stringer?

A. No, sir, not alongside the stringer. As near as I could judge, about 30 or 40 feet; not 30 or 40, but about 20, I should judge.

Q. Held in a loud enough tone for everybody to hear? A. Yes, sir.

Q. A man on the deck of the vessel could hear it as well as you could?

A. Ought to; yes, sir.

Q. Everybody, then, was warned that it was dangerous and they were all keeping out of the way?

A. I was, I don't know that the others were.

Q. Well, they were all warned, weren't they, by that conversation that it was dangerous?

(Deposition of Charles R. Woodson.)

A. They ought to have been.

Q. They ought to have been—everybody?

(No answer.)

Mr. HENGSTLER.—Q. All those that heard the conversation.

Mr. FRANK.—Put your interpretation on it afterwards, Mr. Hengstler.

Q. Was that the first steamer load that was spilled?

A. I wouldn't like to say whether it was or not; I don't recollect.

Q. Might have been more spilled before that spilled?

A. Might have been; I am not posted on that.

Q. Of course, this rope didn't break; all that happened was that the timber slid out, wasn't it?

A. It slid out; yes.

Q. Did you see it?

A. I didn't see it slide out, no, sir; I never saw them when they slid out, no, sir. [140]

Q. You didn't see it on this occasion?

A. No, sir, I did not.

Q. Then you don't know how the accident occurred?

A. No, sir, I don't know just how it occurred.

Mr. FRANK.—That is all.

Mr. HENGSTLER.—Q. Your present intention is to leave town, isn't it, Mr. Woodson?

A. Yes, sir; that is my present intention.

Q. Have you any idea where you are going?

A. No, sir, I have not. I have no definite place

(Deposition of Charles R. Woodson.)
as yet where I am going. I think I will go up to Oregon.

Mr. FRANK.—Q. How long have you been in town?

A. I have been in town one week tonight.

Q. Where did you come from?

A. Came from San Pedro.

Q. Were you sent up specially on this business?

A. No, sir. [141]

State of California,

City and County of San Francisco,—ss.

I, Ceda de Zaldo, a notary public in and for said city and county, do hereby certify: That the witness in the foregoing deposition named Charles R. Woodson was by me first duly sworn to tell the truth, the whole truth and nothing but the truth; that said deposition was then taken at the time and place mentioned in the annexed notice, to wit, at the office of Messrs. Andros & Hengstler, Kohl Building, in the city and county of San Francisco, State of California, on the 10th day of April, A. D. 1908, at the hour of 3 o'clock P. M. of that day; that it was stipulated by counsel for the respective parties that the deposition be taken down in shorthand and thereafter transcribed into longhand, and that said deposition was by me so taken down and transcribed; that the reading and signing of said deposition by the witness was waived by the respective parties hereto; that the foregoing is a full, true and correct transcript of the testimony of the witness and of my shorthand notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at my office in the city and county of San Francisco, State of California, this 20th day of April, A. D. 1908.

[Seal] **CEDA DE ZALDO,**
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Jul. 20, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [142]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 13,310.

Before Honorable FRANK S. DIETRICH, Judge.
DAVID JAMES FLYNN et al.,

Libelants,

vs.

CHARLES E. SUDDEN et al.,
Respondents.

Testimony.

Monday, April 19, 1920.

Counsel Appearing:

For the Libelants: LOUIS T. HENGSTLER,
Esq.

For the Respondents: NATHAN H. FRANK,
Esq.

Mr. HENGSTLER.—May it please the Court:
This is a case in which the libelant, for herself, and

(Testimony of Mrs. H. W. Flynn.)

as guardian of her minor children, sues for damages for the death of her husband. I will read to your Honor the allegations of the complaint, omitting the formal parts. (Reads.)

The evidence in the case has been taken largely by depositions. I offer in evidence first the deposition of George Cainan. (Reads.)

I offer in evidence the deposition of August Ehler. (Reads.)

(A recess was here taken until two o'clock P. M.)

AFTERNOON SESSION.

Mr. HENGSTLER.—I now offer in evidence the deposition of [143] Charles K. Woodson. (Reads.)

I now offer in evidence the deposition of Charles A. Baker. (Reads.)

I now offer in evidence the deposition of John W. Buckley. (Reads.)

Testimony of Mrs. H. W. Flynn, for Libelants.

Mrs. H. W. FLYNN, called for the libelants, sworn.

Mr. HENGSTLER.—Q. Mrs. Flynn, you were here this morning and heard the reading of these depositions, were you not? A. Yes, sir.

Q. You are the widow of James Flynn, the man who died on August 3, 1903, are you not?

A. Yes, sir.

Q. How long had you been married at that time?

A. I was married at Redwood City, California, September 23, 1891.

Q. So you had been married about twelve years?

(Testimony of Mrs. H. W. Flynn.)

A. Yes, sir.

Q. The day when this accident happened, where did you reside? A. San Pedro.

Q. Who resided with you at the time?

A. My husband and children.

Q. How many children did you have?

A. Three.

Q. What were their names?

A. David J. Flynn, John L. Flynn and Barbara G. Flynn.

Q. How old was David J. Flynn at that time?

A. He was ten years old, I think. He was born May 28, 1893.

Q. How old was John L. Flynn?

A. He must have been about six; he was born April 25, 1897.

Q. And how old was Barbara G. Flynn?

A. She was five, I think; she was born November 6, 1898. [144]

Q. What was your husband's business?

A. At that time he was doing longshore work, but he usually went to sea as mate when opportunity offered for him to go.

Q. What were his daily wages at the time he worked as a longshoreman?

A. \$4 or \$4.50 a day, I am not sure which, at that time.

Q. How old was he when he died?

A. Forty-five years old.

Q. How was his health? A. Very good.

Q. Will you tell the Court, if you please, what hap-

(Testimony of Mrs. H. W. Flynn.)

pened with reference to your husband on August 3, 1903, within your own knowledge?

A. The doctor brought him home. He was injured while working on the schooner "Sophie Christensen." The doctor brought him home in the forenoon and put him to bed. The doctor did what he could for him. He told me if there was much trouble to call him. So he fell asleep and he slept until the afternoon, when he was dying. He was groaning in between times. I didn't know that he was dying at the time.

Q. At that time, who furnished you with your daily support? A. My husband.

Q. Had he been doing so ever since you had been married to him? A. Yes, sir.

Q. And who furnished the support for the children? A. He did.

Q. Mrs. Flynn, you were appointed the guardian of your children by the Superior Court of Los Angeles County, were you not? A. Yes, sir.

Q. That was on September 16, 1903?

A. Yes, sir.

Q. And did you act as their guardian after that appointment? A. Yes, sir.

Mr. HENGSTLER.—We have the letters of guardianship here, if it is necessary to produce them.

Mr. FRANK.—They are of age now; they range from 22 to 27 [145] years of age.

Mr. HENGSTLER.—Q. During their minority you acted as their guardian? A. Yes, sir.

(Testimony of Mrs. H. W. Flynn.)

Q. Where have you been residing since your husband's death?

A. In Southern California.

Q. Where were your children residing?

A. They resided with me. I had to work to support them.

Q. Were you working to support your children during the whole period of their minority?

A. Yes, sir.

Q. What kind of a man was Mr. Flynn with reference to steadiness of habits and work?

A. He had steady habits; he always worked every time the opportunity came his way to find employment. He was always ready to work.

Q. You say you supported the children?

A. Yes, sir.

Q. What were you working at?

A. I was working as housekeeper.

Cross-examination.

Mr. FRANK.—Q. You brought them up very nicely, Mrs. Flynn? A. Yes, sir.

Q. They were never in any want at any time?

A. The children?

Q. Yes.

A. Well, under the circumstances I done the best I could on \$60 a month; I had to support my father, and three children and myself out of that.

Q. You say your husband was always ready to work; did he find constant employment, or was he working off and on?

A. It was usually very steady for him, because if

(Testimony of Mrs. H. W. Flynn.)

he didn't find employment as a longshoreman there he went to sea as first officer.

Q. He didn't get any \$4 a day as first officer, did he?

A. No, not when he went to sea; they had a steady wage for that.

Q. About how much—\$60 or \$75 a month?

A. At that time I don't know exactly what they were paying; I think they were paying a little more than that at that time. [146]

Q. But somewhere in that neighborhood?

A. Yes, sir.

Q. Did he have anything the matter with either of his eyes? So that you may know what I am after, did he have a glass eye? A. Yes, sir.

Q. He did? A. Yes, sir.

Mr. HENGSTLER.—At this time I would like to ask the Court to take judicial notice of the table of life expectancy in general use among actuaries and life insurers. Is there any objection, Mr. Frank?

Mr. FRANK.—No objection. Let us not waste any time over that.

Mr. HENGSTLER.—There is a particular table called the Farris Table, frequently referred to in the decisions of courts, which shows that the expectancy of life of a man of 45 years of age was, according to one table, 23.82 years—the Carlisle Table; according to the table made by seventeen combined life insurance offices the expectancy is 22.97 years. According to a table called America Experience Table it is 23.80 years. According to what is called the

(Testimony of M. J. Fitzgerald.)

Thirty Offices Experience, a table used by Actuaries, it is 24.09 years.

Libelant rests.

Testimony of M. J. Fitzgerald, for Respondents.

M. J. FITZGERALD, called for the respondents, sworn.

Mr. FRANK.—Before examining this witness, I wish to suggest the death of quite a number of these respondents. It is agreed that these people have died: Charles E. Sudden, owning three sixtieths. The purpose of this is that the action abates as to them. Under the maritime law each one is liable only in proportion to his ownership. Henry Brooks; R. Y. Taylor; Robert Sudden; Albert Roe; J. J. Steiger; George Johnson; H. Piltz. [147]

Q. Mr Fitzgerald, what is your business?

A. Superintendent for the American Stevedoring Company.

Q. That company is engaged in what class of business? A. Handling lumber.

Q. Handling lumber? A. Yes, sir.

Q. Exclusively? A. Yes, sir.

Q. How long have you been engaged in that business of discharging lumber? A. About 24 years.

Q. Did I understand you to say you were the superintendent?

A. Superintendent at the present time.

Q. Are you familiar with the methods of discharging lumber from vessels? A. I am.

Q. Assuming that you are discharging lumber of

(Testimony of M. J. Fitzgerald.)

two by twelve, and in lengths from ten to twenty feet, I will ask you whether or not it was, in 1903, usual and customary to discharge such lumber with a rope, single turn?

A. Yes, they use single turn most of the time, a rope sling practically all of the time.

Q. Rope all the time, and single turn most of the time? A. Yes, sir.

Q. Is it still the practice?

A. No, they have gone to wire slings now, chain and wire.

Q. How lately has that been done?

A. For the last seven years. In 1903 they used chains, but very few of them.

Q. Rope slings with a single turn was the usual and customary manner, was it?

A. Well, they used double turns sometimes, too, you know.

Q. Let us get at just what it is; you say they used double turns sometimes too: But did they use single turns also, customarily and usually?

A. They would use single turns and when the load was taken off the block the stevedore would take an iron and jam it down. [148]

Q. He would jam it down with an iron?

A. Yes, sir.

Q. I will ask you in your experience whether it is a common and ordinary experience—I will put it stronger than that, whether it was not an every-day experience in discharging cargoes of lumber, for the

(Testimony of M. J. Fitzgerald.)

lumber to fall out of the sling, no matter what kind of a sling you used?

A. Yes; an every-day occurrence.

Q. What do you use on the wire slings?

A. We use a single turn.

Q. Whether you use a single turn, a double turn, a wire sling, or a chain, I am asking you whether or not that is an ordinary occurrence, no matter what kind of a sling you use?

A. Sure; no matter what we use, it happens every day, lumber falls down.

Q. Has that been constant, in your experience?

A. Yes; whether we are using wire, or chain, or rope, it is an every-day occurrence with us.

Q. It is one of the ordinary risks, isn't it?

A. Yes, one of the ordinary risks.

Q. With regard to a Spanish burton, where lumber is discharged by means of a gaff, was it customary to use a Spanish burton?

A. We didn't use them at all in those days. When a vessel has a donkey we generally use the swinging gaff. The only time we used a Spanish burton was when we would have a donkey on the dock and use our own gaff and put on the burton; when a vessel had a donkey, we generally used the swinging gaff.

Q. Who is it that determines how the sling is placed upon the lumber? Who determines that, whether it is a single or a double turn?

A. The men generally use their own judgment on it.

Mr. HENGSTLER.—I object to that, your Honor,

(Testimony of M. J. Fitzgerald.)

on the ground that it is immaterial and irrelevant, who is to determine it in general. The question is who determined it in this case. [149]

Mr. FRANK.—There is no evidence here that anybody determined it. I am showing what the practice is. It was up to this man to take care of himself; if it was part of his duty, it was up to him to do it.

The COURT.—I will let the answer stand.

Mr. FRANK.—That is all; take the witness.

Cross-examination.

Mr. HENGSTLER.—Q. Where does the American Stevedoring Company do its business—in San Francisco? A. In San Francisco.

Q. What is the address? A. 145 Berry Street.

Q. Are they the stevedores of Messrs. Sudden & Christensen? A. No.

Q. But you have worked for Sudden & Christensen, haven't you?

A. I have worked for all firms, I guess, during my twenty-five years experience.

Q. Answer my question: You have worked for Sudden & Christensen, haven't you?

A. For Sudden & Christensen themselves?

Q. Yes. A. No.

Q. Have you never worked for them as a stevedore? A. Not as a stevedore.

Q. In what capacity?

A. I have been in the stevedore contracting business, and their boats might have packed a few loads for some of our customers.

Q. How long have you been the superintendent

(Testimony of M. J. Fitzgerald.)
of the American Stevedoring Company?

A. About 3½ years.

Q. Who are the officers of the American Stevedoring Company?

A. Ben Reid is the president, and H. J. McPhee is the manager.

Q. How often, in your regular work, do you usually handle the discharge of lumber from vessels?

A. Every day.

Q. Do you work as a stevedore?

A. No, I don't work as a stevedore now. [150]

Q. What is your business now?

A. I am superintendent.

Q. You are in the office?

A. No, I am outside all the time.

Q. By "outside," what do you mean?

A. Around the jobs on the wharves and in the yards.

Q. Do you superintendent the loading and unloading of vessels personally? A. Yes, sir.

Q. You see that it is done right?

A. I see that it is done right.

Q. That is your business now, is it? A. Yes, sir.

Q. How long has it been the custom to use chain slings in the discharge of lumber, and wire slings?

A. Wire slings for the last seven or eight years, I believe; they use a few chain slings. They used practically all rope slings at that time.

Q. The ordinary method now is wire slings?

A. Practically.

Q. That is the universal method now?

(Testimony of M. J. Fitzgerald.)

A. Pretty near.

Q. Are you sure it is not longer back than seven or eight years that that has been the usual method?

A. No, I don't think so.

Q. Which, in your opinion, is the safe method in the discharge of lumber, wire chain slings or rope slings? What is your opinion about that, if you have one?

A. Well, I don't know; I could not say; we figure that one is about as safe as the other.

Q. Which is the most expensive, rope or wire?

Mr. FRANK.—That has nothing to do with this case, your Honor.

The COURT.—Let him answer it.

A. As between the cost of wire and the cost of rope, I guess wire costs a little more. I am not familiar with the prices.

Mr. HENGSTLER.—Q. Why do you suppose it is now the general custom to use wire and chain slings instead of rope slings? What is the reason why the stevedores changed their custom from using rope slings to using wire slings?

A. I guess they use the wire now because they don't wear so quick as the rope. [151] That is the only thing I can see.

Q. Have you ever in your personal experience used rope slings in discharging a lumber vessel?

A. Yes, sir.

Q. Do you apply it yourself as stevedore?

A. No, not as stevedore. In 1903 I got hurt pretty bad myself with a rope sling.

(Testimony of M. J. Fitzgerald.)

Q. In what way?

A. By lumber slipping out of the sling.

Q. What kind of a sling was it?

A. A rope sling.

Q. When was that?

A. In about 1903. I was only married a few months, I know, and I got married in 1902, so it must have been about that time.

Q. What kind of lumber was being discharged when you got hurt? A. 6 by 6.

Q. Much smaller lumber than 2 by 12?

A. No, it is a larger size.

Q. You mean a larger length?

A. No, the dimensions of the lumber.

Q. How do you make that out?

A. 2 by 12, and 6 by 6, 6 by 6 is a little more lumber than 2 by 12, according to the way we figure it.

Q. If lumber was being discharged which varied from 2 by 12 to 12 by 12, would you in those days have used a rope sling?

A. Yes, in those days they were practically using rope slings.

Q. For 12 by 12's? A. Yes, for 12 by 12's.

Q. If you did use a rope sling, would you use one with a single turn?

A. We have done that many a time, used a single turn, but we generally jam it, hit it a couple of cracks in the eye of the sling.

Q. Which is the safer method, to make a round turn or a single turn?

A. I suppose in some cases a round turn is, but

(Testimony of M. J. Fitzgerald.)

in some slingloads it doesn't make any difference.

[152]

Q. When does it make a difference?

A. When you have slingloads of flooring.

Q. Suppose it was good rope in both cases, which is the safer method, to make a single turn, or a round turn in discharging large lumber?

A. I figured a single turn was just as safe as a double turn, in my experience.

Q. You do not think it would slip out more easily with a single turn than with a double turn?

A. No, I don't think so.

Q. What kind of a turn did they have at the time you got hurt with that lumber? A. A single turn.

Q. You say that the ordinary method of discharging lumber is by using what they call a swinging gaff? A. Yes, sir.

Q. What directs that gaff out toward the wharf, so that it swings out?

A. They generally take about three or four loads from the offshore side and that puts a little list to it.

Q. That is the only thing that directs it?

A. Yes, sir.

Q. And then it swings out? A. Yes, sir.

Q. And it may easily swing back again?

A. No, not when she has a little list.

Q. But sometimes it does swing back?

A. No, not if she has the proper list.

Q. Suppose some of the load drops out, wouldn't the balance be likely to swing back aboard the ship?

A. No, I don't believe so.

(Testimony of M. J. Fitzgerald.)

Q. You don't believe so? A. No.

Q. But it does happen, doesn't it?

A. I have not seen it happen in my experience; once it goes on the dock it stays there.

Q. It would be very easy to prevent the load from swinging back by attaching some kind of a rope, either to the gaff or to the guy, wouldn't it?

Mr. FRANK.—I object to this examination along this line, your Honor. [153]

Mr. HENGSTLER.—Well, it is along a common-sense line.

Mr. FRANK.—It may be common sense.

The COURT.—The objection is sustained, because it is obvious.

Mr. HENGSTLER.—That is all.

Testimony of R. McDonald, for Respondents.

R. McDONALD, called for the respondents, sworn.

Mr. FRANK.—Q. Mr. McDonald, what is your business? A. Stevedoring on the Front.

Q. How long have you been engaged in that business? A. Over 30 years.

Q. Where?

A. All around the waterfront in San Francisco.

Q. In your stevedoring business, what has been the nature of the cargoes you have had?

A. Practically all lumber.

Q. Where are you employed now?

A. The American Stevedoring Company.

Q. In what capacity? A. Lumber.

Q. In what capacity?

(Testimony of R. McDonald.)

A. Around the steam schooners, foreman.

Q. Foreman? A. Yes, sir.

Q. What have you to say in regard to the practice of slinging large lumber with a rope sling, with a single turn, as far back as 1903?

A. Well, practically in that time I don't think there were any wire slings, and they were practically all rope slings; very few chain slings.

Q. How about a single turn?

A. Sometimes they would put on a single turn, sometimes a double turn, just how the case might be.

Q. When you say "how the case might be," what do you mean?

A. Well, according to the loads, and sometimes it would be up to the men themselves, whether they would put on a single turn or a double turn. If you put a gang of men aboard a ship they are supposed to know their business; lumber will slip out even with two [154] turns as well as one turn.

Q. What has been your experience in regard to its slipping out?

A. I have seen it slip out both ways.

Q. How in regard to its frequency, whether it is an every-day occurrence?

A. Well, I would not say that; it is a common occurrence.

Q. Well known by all those who are engaged in that business? A. That is the idea.

Q. How about the use of a Spanish burton when you have a swinging gaff?

A. I never have used one. I have seen it used on

(Testimony of R. McDonald.)

ships where they didn't have a swinging gaff.

Q. But in the case where they had a swinging gaff, did they use a Spanish burton?

A. No, they never used a Spanish burton.

Cross-examination.

Mr. HENGSTLER.—Q. Mr. McDonald, do you know whether the American Stevedoring Company does the regular stevedoring work for the firm of Sudden & Christensen?

A. Well, I don't know; of course, they do some of it.

Q. They do some of it? A. Yes, sir.

Q. Sometimes, in using a rope sling, you use a single turn and sometimes you use a double turn?

A. Oh, yes, I have seen it used both ways.

Q. Which is the safer and better way?

A. Well, practically, I didn't see much difference in it. I have seen the lumber slip out of the double turns as well as single turns. I have seen it slip out both ways.

Q. Which way do you think it would slip out more easily?

A. Well, of course, it might slip out easily in a single turn, but I never seen any difference in it. Of course, I could not tell that.

Q. Would it make any difference whether the rope is a new rope, or not, so far as the slipping out is concerned? [155]

A. No, I don't consider it would. I don't think it would slip out more easily. I would sooner work around a new rope than an old rope.

(Testimony of R. McDonald.)

Q. If it was a brand new rope, you would not object to it?

A. No, sir, I would sooner work around a brand new rope, it is safer.

Q. Have you ever seen a chain sling used in the discharge of lumber?

A. Yes, I have used them myself.

Q. And a wire sling?

A. Yes—not in those days, though; they use them now.

Q. You mean to say you never saw a wire sling in 1903?

A. No, I don't remember them in those days. We used some chain slings.

Q. Chain slings have been in use for the last twenty or thirty years, haven't they? A. Oh, yes.

Q. Have you ever been hurt by lumber falling upon you? A. No, I have never been hurt.

Redirect Examination.

Mr. FRANK.—Q. In the case of a single turn, what can you say as to the practice among stevedores of driving the sling down tight with a stick of wood?

A. You tighten up the sling before the donkeyman calls the winchman; you generally have a block and you hit the sling down.

Q. What do you call that block?

A. I don't know what you would call it.

Q. When that is done, when the sling is struck with a block so as to drive the hook down, does it spring back, or is it likely to spring back at all?

A. No; the weight is on the load then. The winch-

(Testimony of R. McDonald.)

man goes ahead and the weight is on the load.

Q. And it won't spring back?

A. No. If a man understands his business, he generally puts his sling to one side, in one corner of [156] the load, and when the winchman goes ahead the sling tightens right up in the center of the load.

Q. Explain what you mean by that. Take a square load, for instance, or a load where the corner of the lumber is, do you mean he carries the hook over to the corner of the lumber?

A. Yes, and put your sling right there, and when he goes ahead the end of the sling goes through both loops, and you have one loop right here at the corner, and when he goes ahead, by the time the sling is tightened up it is right in the center of your load.

Q. That makes the single turn just as tight as a double one? A. Yes, just as tight.

Q. Is that the proper way to fasten a single turn?

A. That is the proper way.

Recross-examination.

Mr. HENGSTLER.—Q. Do you ever use a single turn nowadays with rope slings?

A. Well, practically they do, sometimes; there are very few rope slings used nowadays.

Q. With your experience as a stevedore, would you, if you had charge of unloading heavy lumber, timbers varying from 2 by 12 to 12 by 12—

Mr. FRANK.—I don't recall any testimony of 12 by 12's. It was 2 by 12.

Mr. HENGSTLER.—Your Honor will find several

(Testimony of R. McDonald.)

places in the depositions, testimony to the effect that it varied.

Mr. FRANK.—This particular load was 2 by 12.

Mr. HENGSTLER.—This particular load?

Mr. FRANK.—2 by 12 up to 12 by 12 was used in this particular vessel.

Mr. HENGSTLER.—Q. If you had to discharge a vessel that carried heavy mining timber, 2 by 12 up to 12 by 12, and possibly 20 feet long, would you use a rope sling with a single turn to it in [157] discharging it, if you had charge of it?

A. Well, it would be just according to the size of the slingload; some slingloads would be so large that you could not use a rope sling; you take a 12 by 12, a rope sling is just as good as a chain sling; that would be 20 feet long.

Q. Do you mean that? A. Yes, sir.

Q. Don't you think a chain sling has a better grip?

A. No.

Q. Why do you think they discarded all the rope slings and don't use them any more?

A. Because they don't last so long. A wire sling lasts four or five times as long as a rope sling.

Q. And they are correspondingly more expensive?

A. The wire sling, yes.

The COURT.—Q. How is one of these wire slings made? It is not a straight wire, of course?

A. No, it is not straight wire. They have a hook on one end and a loop on the other, and you put it right around your load and then hook it on the donkey fall.

(Testimony of R. McDonald.)

Q. How is it pliable, so that it grips the bunch of lumber? A. Oh, it is quite pliable.

Q. And you say that is used with a single turn?

A. A single turn all the time.

The COURT.—I don't believe I understand just how a wire could be used for this purpose.

Mr. FRANK.—It is wire rope, your Honor.

Mr. HENGSTLER.—It practically cuts into the lumber.

Mr. FRANK.—I don't think Mr. Hengstler's experience as a longshoreman warrants him in making that statement.

The WITNESS.—You can't use a wire sling on surfaced lumber, it cuts into the lumber; you have to use a rope sling on surfaced lumber.

Mr. HENGSTLER.—So my experience, Mr. Frank, is borne out. [158]

Mr. FRANK.—Yes, you are a better stevedore than I thought you were.

The COURT.—Q. Surfaced lumber would be more apt to slip out than rough lumber?

A. Oh, yes.

Q. How would it be possible for rough lumber to slip out if you took a double turn?

A. Well, I don't know how it is, but it does. Lumber, of course, does not always vary in size.

Q. It would be because it varies in size?

A. Yes, sir.

Mr. HENGSTLER.—Q. Is it not because it varies in size, and because the different sizes don't fit close together? A. That is right.

(Testimony of R. McDonald.)

Q. And the center one may get out of position and may drop out? A. Yes, sir.

The COURT.—Q. Ropes are not used now, except for surfaced lumber?

A. Practically not except for surfaced lumber.

Testimony of A. McPhee, for Respondents.

A. McPHEE, called for the respondents, sworn.

Mr. FRANK.—Q. What is your business?

A. I work at stevedore work.

Q. How long have you been working at that?

A. For 20 years.

Q. And before that?

A. I used to go to sea before that.

Q. You were a sailor? A. Yes, sir.

Q. In your experience as a sailor, have you had any experience on lumber schooners?

A. Yes, I have had some experience here on lumber schooners.

Q. I mean as a sailor.

A. Oh, yes, I have been sailing on them, too.

Q. In your experience as a stevedore, what class of cargoes have you been handling?

A. Lumber, mostly.

Q. What are you doing now?

A. I am working on lumber, now, [159] stevedore work.

Q. In regard to the method of discharging lumber by means of a rope sling, state whether or not, in your experience, as far back as 1903, it was usual and cus-

(Testimony of A. McPhee.)

tomary to discharge lumber with a single turn as well as with a double turn.

A. No, I don't think it was. I always used double turns.

Q. You always used double turns? A. Yes, sir.

Q. And you do still?

A. Yes, sir, I do still. I do it altogether, now.

Q. I understood you to tell me the other day that it was usual to use single as well as double.

A. I never spoke about the turns.

Q. State whether or not it is a matter of almost daily occurrence for lumber to fall out of the sling.

A. Yes, lumber falls out of the slings now, wire slings and chain slings, it falls out of the top; if the load is hooked on so that it comes at an angle of 45, it is liable to slip out?

Q. Now, I am asking you about the double turn. Has it been a matter of common occurrence for it to slip out with double turns, rope slings?

A. It would sometimes slip out of the middle of the turn but not out of the top; a rope sling with a round turn holds the lumber very firm; on a one-turn load, like you have spoken of, on 2 by 12 planking, a round turn with a rope sling could not slip out, if it was at an angle of 45.

Q. It could not slip out?

A. No, not unless the sling would break.

Q. I am asking you about your experience, as to whether or not it is a daily experience for the lumber to slip out. A. It does, yes, sir.

Q. How frequently?

(Testimony of A. McPhee.)

A. Well, you might see it slip out of loads three or four times a day on some vessels; then some days you would not see any—that is, on wire slings that they use now. [160]

Q. I want to know what your experience is as to slipping out when using rope slings.

A. Well, if you give it one turn and you don't get it right by the center, I have seen the whole load slip out of the sling. Take the short loads, they have the loads already made up in the hatches of some vessels, and they have rope slings on already, they have it ready to lift the sling right out, and I have seen those loads, if they tip a little bit when there is one turn and there is a big gap—when the rope slips it is up like that, about a foot from the eye, you have a foot space there, and if that load happens to slip at an angle of 45, or something like that, and it is heavier on one end than on the other, the whole load slips out.

Q. Is it not the usual practice to take a stick and jam it down?

A. Yes, I have done that lots of times, but you can't get it down far enough.

Q. How about placing the sling so that the hook comes at the edge?

A. You have not got any hook on those slings.

Q. On the eye? A. On the eye.

Q. The eye comes at the edge of the plank, and it will turn up, won't it?

A. Yes, that possibly could be done.

(Testimony of A. McPhee.)

Q. I am asking you whether or not it is the practice to do it.

A. I never do it or seen it done. It puts the load on an angle, like. I don't think it is a very good idea. Of course, they are doing away with the rope slings in lumber altogether now, except the redwood lumber, where the wire cuts it too much, then they have to use rope, and where they use a rope they use a hook, a slip hook and one turn.

Q. Mr. McPhee, didn't you tell me two days ago that you agreed perfectly with these other two gentlemen in what they testified to?

A. I said that the lumber will slide at any time, with any kind of sling, from the middle of the load.

[161]

Q. With any kind of a sling?

A. Yes, with any kind of a sling, it will slip out of the middle of the load if there are some small sizes in it.

Q. Didn't you tell me that that was your daily experience during the twenty years—almost daily?

A. Yes, sir.

Q. That it happened? A. Yes, sir.

Q. It is one of the ordinary risks you take?

A. Yes, you are looking for it all the time.

Q. You are looking for it all the time?

A. Yes, sir.

Mr. FRANK.—That is all.

Mr. HENGSTLER.—No questions.

Testimony of Hans D. Lungvalt, for Respondents.

HANS D. LUNGVALT, called for the respondents, sworn.

MR. FRANK.—Q. Captain, you were the master of the schooner "Sophie Christensen" at the time of this accident? A. I was.

Q. Did you see the accident? A. I did.

Q. What happened—tell us how the accident happened.

A. I came along from aft and was going forward, I was going to talk to the steward; I was going to tell him to bring me some breakfast; it was about ten or fifteen minutes after eight o'clock in the morning; when I came forward they were heaving a load up out of the hold, and the load started to slip; there were a couple of planks slipped out of the load; it was a single load, 12 by 12's, and I suppose 20 pieces in it; I seen the pieces start in to slip out, and I said to everybody, "Get out of the way, get out of the way." And everybody was out of the way, all walked away, and the load swung in to the wharf. When it came in to the wharf the donkeyman didn't let it go; he could have let it go, but he kind of held on, and the load swung back and one plank slipped out again and it stood on end; Mr. Flynn, the man that got hurt, had gone back, he was warned to [162] get away and he was away, he was between the poop and the mizzenmast, but he went back again; nobody told him to go back; he went back on his own account, and this plank fell out and hit him

(Testimony of Hans D. Lungvalt.)

on top of the head. I walked over and got hold of the man and picked him up and I took him down into the cabin, and I bathed his head and I gave him a big drink of whiskey. He said to me, "I am able to go to work now." I said, "No, let us go and see the doctor, and if the doctor says you are all right you can come to work right away again." So we went to the doctor. He said to the doctor, "I would like to see you privately." He said, "All right." And they went in the room; they went in another room. The doctor came out after awhile and said, "Do you know what he wants?" I said, "No." He said, "He wanted to tell me he had a glass eye." I said, "He could have told me that right here, because I know that." The doctor said, "The man wants to go to work again." I said, "He is kind of dizzy: I will take him home." That is all I know about it.

Q. Did Mr. Buckley, or anybody else, come to you and make any protest about using a single turn rope?

A. No, sir; no, sir.

Q. How long had you been discharging there when that happened?

A. I believe four and one-half days.

Q. Using the same kind of sling all the time?

A. All the time.

Q. Do you know what the length of those ropes was?

A. I do pretty well; they were over three fathoms, about eighteen feet.

Q. About eighteen feet? A. Yes, sir.

Q. Was that sufficient to have made a double turn

(Testimony of Hans D. Lungvalt.)

if they had seen fit? A. Yes, sir.

Q. Who determined on board the vessel whether they should make a single or double turn?

A. The men do that just about the way they please; if you stood there and told them to put a double turn around they would tell you to go to the hot place.

Q. What can you say about fastening a single turn by the use of a [163] block?

A. Well, a single turn is used a great deal, and mostly, in my experience, because it is all large lumber.

Q. How about driving it down? Is there a practice of driving it down with a block, with a stick of wood?

A. It is not necessary. If you have a load of lumber of that kind, if you put the eye on the side of the sling, you have two eyes generally in the sling, and if you put one in through the other eye and put it on the side of the load it will tighten itself. You don't have to hit it, it is not necessary to hit it. Most of the men when they sling a load of lumber they will put the eye on the side of the load, and when they heave it tight it tightens up itself.

Q. When you fasten it in that way, does it bind the load the same way as a double turn, or does it not?

A. Just as good, with that kind of lumber.

Cross-examination.

Mr. HENGSTLER.—Q. At the time when the "Sophie Christensen" was discharging her lumber,

(Testimony of Hans D. Lungvalt.)

only one turn, a single turn, was used on that lumber?

A. At times they used a double and at times they used a single; it was up to the men to do so.

Q. You mean in the discharge of this particular vessel they sometimes used a double turn?

A. Sometimes they used a double and sometimes a single, according to the load they sent up. If I was sending up a load of large lumber, I would use a single turn. On that kind of lumber, it is not necessary to use a double turn. If you have battens, and small lumber, etc., a round turn is all right to jam the lumber together; but this is not necessary to jam it together with this large lumber. We specially load them; most of them was single turn. This was just one single turn, with about 18 or 20 pieces in it. It was only necessary to put one turn around it. In that kind of a load they will make them single because they can load them so much easier in the truck, and they take the trucks [164] and sort them again, run them over to the cars and pick them up. 10 by 10's is most mining timber. They put about four or six pieces in a load; they never slide out, they jam up together. But with small lumber, 1 by 3, 2 by 4, and such sizes, you generally put a round turn around and jam it up, and even then they will slip out, nearly in every load they will slip out because the lumber is not cut even by the mill, one will jam the other. It is a common occurrence every day for a piece of lumber to fall out. I bet through hurry there is a piece or two of lumber falls out of a

(Testimony of Hans D. Lungvalt.)
sling no matter what method is used.

Q. Don't you think that a rope sling with a single turn is better than a wire sling would be for lumber?

A. Well, I don't know about that. When I was sailing they didn't use wire very much; it was more rope or chain. When I was sailing they didn't use wire much. It is only lately. In the "Sophie Christensen" nobody used wire. Afterwards, when I started to sail again wire was in use, and I have used wire; wire is just the same, lumber will slip out of a wire sling just as well as out of a rope sling, because the lumber is not cut even. Every man generally looks out for the load and looks after it until it is clear or gets landed, and then the men go to work again.

Q. What did you use after the accident happened?

A. I used the same slings as I used before the accident.

Q. Isn't it a fact you used chain slings after the accident?

A. I didn't do any such thing.

Q. If the other witnesses in this case testified that they used chain slings, do you say they didn't tell the truth?

The COURT.—That is argumentative.

A. I don't know what the other witnesses said, but that is what I say. [165]

Mr. HENGSTLER.—Q. Did you see the lumber when it struck Mr. Flynn? A. I did.

(Testimony of Hans D. Lungvalt.)

Q. You stated, did you not, that it came back from the wharf?

A. Yes, it swung off the wharf and a piece fell out; it stood on end this way, and the other end hit Mr. Flynn right in the head.

Mr. HENGSTLER.—If your Honor please, I do not think I have any other questions. I didn't hear a great deal of the direct examination of this witness, and, with your Honor's permission, I would like to have his direct examination read; I might have missed something that might be of some importance.

The COURT.—Very well.

(The record was here read by the reporter.)

Redirect Examination.

Mr. FRANK.—Q. You are not connected with the "Sophie Christensen," or with the owners?

A. No, not at all.

Q. You have been away from her many years?

A. I have not been on the "Sophie Christensen" for about eight years.

Q. And you have no interest in this, whatsoever?

A. No interest whatsoever.

Mr. FRANK.—I offer in evidence the deposition of D. W. Nilsson. (Reads.)

That is the case, your Honor.

The COURT.—We will take an adjournment now until to-morrow morning at ten o'clock.

Tuesday, April 13, 1920.

(Thereupon the cause was argued by the respective counsel, during which the following occurred:)

Mr. FRANK.—It is proper to permit an amendment to the pleading to conform to the testimony. If there is any question of that [166] kind I ask the privilege of making an amendment, if the decree is not in our favor.

Mr. HENGSTLER.—I do not desire to compel you to make an amendment to your answer. I merely mention it to show that the defense of the negligence of fellow-servant is not set up in the answer, and we had no notice upon the matter in making up our case.

The COURT.—I had hoped to be able to render my opinion at the conclusion of the argument, but there is one point of law I desire to look up. I will decide it within two or three days at the outside.

[Endorsed]: Filed Jul. 20, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [167]

In the Southern Division of the United States District Court in and for the Northern District, First Division.

IN ADMIRALTY—No. 13,310.

DAVID JAMES FLYNN and Others,

Libelants,

vs.

E. A. CHRISTENSON and Others,

Respondents.

Memorandum Decision.

April 16, 1920.

DIETRICH, District Judge:—

On the question of the primary negligence of the owners I find that the rope sling was in general use and while the single turn was not unusual the double turn was the more common and was recognized as a safer practice. It is difficult entirely to discredit the statement of libelants' witnesses, especially the testimony of the superintendent of the Lumber Company to the effect that a single turn was regarded as extrahazardous and that protest against its use was made to the officer in charge. It may be admitted that, if carefully adjusted, a single turn will bind quite as closely as a double, a bundle having a certain shape, so long as the rope is taut and there is no shifting of the timbers, but we have only to resort to known physical laws to be persuaded that, generally speaking, the double turn grips more closely and will more quickly adjust itself to changing form. It may be added that one of the witnesses for the respondents quite emphatically testified that the double turn is safer. The mere fact that the single turn was used to some extent is not a sufficient defense. Under the circumstances of the case, due regard for the safety of the workmen demanded the adoption of the safer method. It was the non-delegable duty of the respondents [168] to take reasonable care in providing safe appliances for carrying on the work. The slings in question were long enough only for a single turn, and, being new, were comparatively stiff

and smooth. It is difficult to see how such an accident could have occurred if the double turn had been employed. When the bundle struck the railing of the wharf some of the shorter pieces were shaken out and thus the size of the bundle was reduced. To this smaller bulk, a double turn would necessarily have quickly adjusted itself, whereas the single turn doubtless failed to tighten, and from the partially open loop thus left the other pieces, by one of which the deceased was struck, easily escaped. Upon the whole, it is thought that the failure to provide slings long enough for a double turn constituted negligence.

If it be conceded that the common-law doctrine of assumed risk can be invoked in a case of this character, such a rule, almost universally recognized as operating harshly under modern industrial conditions, should be sparingly applied where the master is negligent and continues to require the use of an inadequate or defective appliance after its insufficiency has been called to his attention. It is to be noted that this defense is not pleaded, and while, without pleading it, a defendant may avail himself of it, if it is established by the plaintiff's own evidence, the evidence relied upon under such circumstances should be reasonably conclusive. Certain answers elicited from libelants' witnesses on cross-examination tend to induce the belief that the deceased was able to appreciate the ordinary dangers incident to his employment and to the use of the single turn. Doubtless short or small pieces of timber sometimes escape from a load whether the single or double turn is used and a workman with any

considerable experience must take knowledge of the danger from that [169] source, but here, as already noted, the long timbers slipped out after the load had reached the wharf railing, a casualty which is not shown by the evidence to be of frequent occurrence.

The real question in this connection is thought to be one of contributory negligence and that defense is put in issue by the pleadings. The general nature of such hazards as are incident to the use of a single turn was well known and injury could be avoided by the exercise of a proper degree of caution. That is, there was but a single peril, the slipping of timbers from the load, and manifestly workmen could protect themselves by standing back when the load began to rise and remaining back or keeping a lookout until it was actually deposited on the wharf. It is not a case where in using an appliance, known by him to be defective, a workman is subjected to a peril which it is impossible for him to escape. The view must be taken that the deceased knew quite as well as his superiors of the kind of perils attending the use of the different forms of slings and it was his duty to exercise care commensurate with the degree of peril. It was possible for him to be on guard until the load swung on to the wharf in harmony with the practice followed by some of his fellow-employees, and realizing, as he must have done, that the timbers were likely to slip out of the load, it was incumbent upon him in the exercise of due care, to keep a lookout until danger was past.

Under the rule prevailing in maritime jurisdicti-

tion, where both parties are chargeable with a want of due care and the negligence of neither is wilful or gross, the damages will be apportioned. Clearly neither party in this case was guilty of gross negligence. Accordingly upon consideration of the whole case, I have concluded to divide the damages and to award libelants upon the basis of \$10,000.00. [170]

At the trial, counsel for the respondents suggested the death of respondents, Charles E. Sudden, owner of three sixty-fourths (3/64), Henry Brooks one thirty-second (1/32), R. Y. Taylor, one thirty-second (1/32), Robert Sudden five thirty-seconds (5/32), Albert Rowe two thirty-seconds (2/32), J. J. Staiger one thirty-second (1/32), George Johnson one thirty-second (1/32), and H. Pilts one thirty-second (1/32), and the correctness of the statement was not questioned by counsel for the libelants. Admittedly as to them the action has abated, and therefore, in the aggregate the decree can be for only thirty-seven sixty-fourths 37/64 of \$10,000.00.

Under the circumstances it is thought that two-thirds of the recovery should go to the widow of the deceased and the other third in equal shares to the three children.

Counsel for the respondents will prepare a decree in harmony with these conclusions.

[Endorsed]: Filed Apr. 16, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [171]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 13,310.

DAVID JAMES FLYNN et al.,

Libelants,

vs.

E. A. CHRISTENSON et al.,

Respondents.

Memorandum Decision.

ANDROS & HENGSTLER, Proctors for Libelants.

NATHAN H. and IRVING H. FRANK, Proctors for Respondents.

DIETRICH, District Judge.

Upon the request of counsel for both sides, I have without the formality of a petition for rehearing, given consideration to two points not argued upon the original submission.

The first is a contention on the part of the libelants that in the decision it was erroneously assumed that the respondents' liability is several and limited to their respective interests in the schooner. Richardson vs. Harmon, 222 U. S. 96. As I understand they do not now seriously question the right of most of the respondents to invoke the rule, but say only that Hans J. Lunvaldt was master and E. A. Christenson was managing owner and that their responsibility is unlimited because their personal negligence

directly contributed to the accident. The difficulty with this contention is that the record would not support the requisite findings of fact. The amended libel appears to have been drawn upon the assumption of limited liability only, for otherwise there would seem to have been no reason for pleading the extent of the [172] proportionate interests of the owners. There is no intimation of a claim that the liability of some was of a different character than that of the others. Referring to the evidence it is to be said that, generally speaking, the testimony is to the effect that the mate was in charge of the work of removing the lumber. One witness I think testified that the master was informed that the slings were too short, but I don't recall that his name was given or that his interest, if any, in the schooner, was shown; nor do I remember that there was any evidence to establish who was the managing owner, or tending to fix upon him personal responsibility for the inadequate slings. As already suggested, the case seems to have been pleaded and tried upon the theory that the respondents all stand upon the same footing and that their liability is limited to their respective shares in the vessel.

As to the amount of damages the respondents contend that the findings is excessive and, upon further reflection and a consideration of numerous precedents, I have concluded that it should be reduced. There has, however, been no misapprehension of the legal principles involved. It is recognized that no award can be made for merely sentimental considerations or to assuage the grief of the bereaved. The

loss for which the libelants are to be compensated is a pecuniary one. But in any given case the amount thereof is necessarily to a large extent a matter of judgment touching which there is room for wide difference of opinion among reasonable men. The earning capacity of the deceased is an unimportant but not the only consideration. The pecuniary value of the life of a husband or father is not measured solely by the wages he earns in eight hours out of the twenty-four. The assistance he may, and often does, render in the other [173] sixteen hours in managing the household and maintaining the home, his services in caring for his family, his society, comfort and advice,—all may be of great value. It is suggested that I follow the rule in this jurisdiction, but I find no rule either statutory or otherwise and the precedents in this court to which my attention has been drawn are not sufficiently numerous or uniform to establish a rule. It is further suggested that inasmuch as the right of action is conferred by the statute of the State the standard of damages recognized by courts of the state should be adopted. Assuming, but not deciding, that place should be given to such a view it is sufficient to say that no standard is shown. As is to be expected the decided cases exhibit a wide diversity in the amounts recovered by claimants. I do not undertake to review or classify them, but some idea of their range may be gotten by reference to McGory vs. Pacific Ry. Co., 20 Cal. App. 671, where a \$20,000.00 verdict was sustained, and Catlin vs. Union Oil Co., 31 Cal. App. 597, where a \$17,000.00 verdict was not disturbed.

Without further discussion I find that in the death of the husband and father the libelants suffered a loss of thirteen thousand dollars (\$13,000.00). For the reasons stated in the original opinion this amount will be divided and an award made to libelants on the basis of a total of Six Thousand Five Hundred Dollars (\$6,500.00), two-thirds to the widow and one-third in equal parts to the three children; the latter are now mature. The decree will run against each respondent severally for his proportionate share; for example, if a respondent was the owner of one thirty-second part of the schooner, the decree against him will be for one thirty-second of the Six Thousand Five Hundred Dollars, or, if I have made a correct computation, \$203.12. Libelants will also recover [174] their costs.

For a similar accident occurring now the amount would be thought to be inadequate, and upon the original submission the question was doubtless viewed too much in the light of present conditions. For some unexplained reason the case has been permitted to go untried for many years, but for aught that appears respondents are not chargeable with the delay, and for it there is no remedy.

May 1st, 1920.

[Endorsed]: Filed May 1, 1920. W. B. Maling.
Clerk. By C. W. Calbreath, Deputy Clerk. [175]

At a stated term of the Southern Division of the United States District Court, for the Northern District of California, held at the courtroom in the United States Postoffice Building, in the City and County of San Francisco, State of California, on the —— day of May, one thousand nine hundred and twenty. Present: The Hon. MAURICE T. DOOLING, District Judge.

No. 13,310.

DAVID JAMES FLYNN, BARBARA FLYNN,
and JOHN FLYNN, Infants, by Their
Guardian and *Prochein Ami*, HONORA
DELLA FLYNN, HONORA DELLA
FLYNN,

Libelants,

vs.

E. A. CHRISTENSON, HANS J. LUNVALDT,
CHARLES E. SUDDEN, J. H. BAXTER,
A. TAVIERA, W. B. GODFREY, Jr., F. M.
DELANO, WALTER V. ROHLFFS, R. L.
ANDERSON, GEO. F. QUIGLEY, D. W. C.
TIETJEN, CECELIA F. SUDDEN,
HENRY BROOKS, R. Y. TAYLOR, ROB-
ERT SUDDEN, JAS. JOHNSON CO., a
Corporation, ALBERT ROWE, J. J. STA-
GER, EDMUND JACOBS, R. C. SUDDEN,
GEO. JOHNSON, JOHN L. HUBBARD,
H. PILTZ, LOUIS POOLE,

Respondents.

Final Decree.

The above-entitled cause having come on for hearing on the pleadings and proofs adduced by the respective parties, and having been argued and submitted, and due deliberation having been had in the premises, and the Court having rendered its decision herein,—

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED, that Honora Della Flynn, in her own right, and as guardian of David James Flynn, Barbara Flynn and John Flynn, do have and recover from the respondents herein as follows:

From Respondent E. A. Christenson, owner of 2/32, the sum of \$406.24;

From Respondent Hans J. Lunvaldt, owner of 2/32, the sum of \$406.24; [176]

From Respondent J. H. Baxter, owner of 1/32, the sum of \$203.12;

From Respondent J. Taveira, owner of 1/64, the sum of \$101.56;

From Respondent W. B. Godfrey, Jr., owner of 1/32, the sum of \$203.12;

From Respondent F. M. De Lano, owner of 1/32, the sum of \$203.12;

From Respondent Walter V. Rohlfss, owner of 1/32, the sum of \$203.12;

From Respondent R. L. Anderson, owner of 1/32, the sum of \$203.12;

From Respondent George F. Quigley, owner of 1/32, the sum of \$203.12;

From Respondent D. W. C. Tietjen, owner of 2/32,
the sum of \$406.24;
From Respondent Cecelia F. Sudden, owner of 1/32,
the sum of \$203.12;
From Respondent James Johnson Co., owner of 1/32,
the sum of \$203.12;
From Respondent Edmund Jacobs, owner of 1/32,
the sum of \$203.12;
From Respondent R. C. Sudden, owner of 1/32, the
sum of \$203.12;
From Respondent John L. Hubbard, owner of 1/32,
the sum of \$203.12;
From Respondent Louis Poole, owner of 1/32, the
sum of \$203.12;
—with interest thereon from the date of this decree
at the rate of six per cent per annum until paid, to-
gether with libelants' costs and disbursements to be
taxed, and that, in default of the payment of said
sums by any of said respondents, execution issue
against such respondents.

AND IT IS FURTHER ORDERED, AD-
JUDGED AND DECREED, that said moneys be
divided between said Honora Della Flynn and the
said David James Flynn, Barbara Flynn and John
Flynn, two-thirds to the said Honora Flynn, and the
balance of one-third of said moneys to David James
Flynn, Barbara Flynn and John Flynn in equal
shares.

FRANK S. DIETRICH,
Judge of Said Court.

May 20, 1920.

[Endorsed]: Filed May 27, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk.

(Entered in Vol. 10, Judg. and Decrees, at page
13.) [177]

In the Southern Division of the United States Dis-
trict Court, Northern District of California, Di-
vision One.

No. 13,310.

DAVID JAMES FLYNN, BARBARA FLYNN,
and JOHN FLYNN, Infants, by Their
Guardian and *Prochein Ami*, HONORA
DELLA FLYNN, HONORA DELLA
FLYNN,

Libelants,

vs.

E. A. CHRISTENSON et al.,

Respondents.

Notice of Appeal.

To the Respondents Herein and to Messrs. Frank &
Mansfield, Messrs. Frank & Frank, Proctors for
Respondents, and to the Clerk of the District
Court for the Northern District of California,
Southern Division:

You, and each of you, will please take notice that
the libelants in the above-entitled cause hereby ap-
peal to the United States Circuit Court of Appeals
for the Ninth Circuit from the final decree of the
District Court of the United States for the Northern

District of California, made and entered in said cause on the 27th day of May, 1920.

Dated at San Francisco, California, this 15th day of July, 1920.

ANDROS & HENGSTLER,
LOUIS T. HENGSTLER,
Proctors for Libelants.

Receipt of a copy of the within notice of appeal is hereby admitted this 14th day of July, 1920.

NATHAN H. FRANK and
IRVING H. FRANK,
FRANK & MANSFIELD,
Proctors for Respondents.

[Endorsed]: Filed Jul. 15, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [178]

In the Southern Division of the United States District Court, Northern District of California, Division One.

No. 13,310.

DAVID JAMES FLYNN, BARBARA FLYNN,
and JOHN FLYNN, Infants, by Their
Guardian and *Prochein Ami*, HONORA
DELLA FLYNN, HONORA DELLA
FLYNN,

Libelants and Appellants,
vs.

E. A. CHRISTENSON et al.,
Respondents and Appellees.

Assignment of Errors.

Now come libelants and appellants above named and assign the following as errors in the conclusions, findings, proceedings and decrees of the District Court:

I.

The Court erred in finding and deciding that the action abated against Respondents Charles E. Sudden, Henry Brooks, R. Y. Taylor, Robert Sudden, Albert Rowe, J. J. Staiger, George Johnson and H. Piltz.

II.

The Court erred in omitting to make, render and enter its decree against Charles E. Sudden, Henry Brooks, R. Y. Taylor, Robert Sudden, Albert Rowe, J. J. Staiger, George Johnson and H. Piltz, for the amount of the liability of each of the said Respondents.

III.

The Court erred in holding and deciding that, in the aggregate, the decree of the Court could be for only thirty-seven sixty-fourths of the aggregate liability of said respondents.

IV.

The Court erred in not holding and deciding that the decree [179] of the Court should be for the full amount of the aggregate liability of said respondents.

V.

The Court erred in holding the deceased chargeable with a want of due care.

VI.

The Court erred in dividing the damages by reason of the want of any or all due care on the part of the deceased, and in dividing the damages at all.

VII.

The Court erred in assuming that the liability of the respondents is several.

VIII.

The Court erred in assuming that the liability of the respondents is limited to their respective interests in the schooner.

IX.

The Court erred in finding and deciding that the liability of respondent E. A. Christenson is less than the full amount of the damages suffered by libelants.

X.

The Court erred in finding and deciding that the liability of Hans A. Lunvaldt, the master of the vessel, is less than the full amount of the damages suffered by libelants.

XI.

The Court erred in reducing the original amount of the damages fixed by the Court.

XII.

The Court erred in reducing the amount of damages suffered by libelants in the death of the husband and father from the sum of \$20,000 to the sum of \$13,000.

XIII.

The Court erred in dividing the amount of \$13,000 and giving to libelants an award only on the basis of a total of \$6,500. [180]

XIV.

The Court erred in ordering a decree against each respondent severally for his proportionate share.

ANDROS & HENGSTLER,

LOUIS T. HENGSTLER,

Proctors for Libelants.

Receipt of a copy of the within assignment of errors is hereby admitted this 14th day of July, 1920.

NATHAN H. FRANK,

IRVING H. FRANK,

FRANK & MANSFIELD,

Proctors for Respondents.

[Endorsed]: Filed Jul. 15, 1920. W .B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [181]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 13,310.

DAVID JAMES FLYNN, BARBARA FLYNN
and JOHN FLYNN, Infants, by Their
Guardian and *Prochein Ami*, HONORA
DELLA FLYNN, HONORA DELLA
FLYNN,

Libelants,

vs.

E. A. CHRISTENSON et al.,

Respondents.

Bond for Costs on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That American Indemnity Company, a corporation, duly organized and existing under and by virtue of the laws of the State of Texas, and licensed to do a general surety business in the State of California, as surety, is held and firmly bound unto the respondents in the above-entitled cause in the sum of Two Hundred and Fifty (\$250.00) Dollars, to be paid to the said obligees, to which payment well and truly to be made it hereby binds itself firmly by these presents.

Signed, sealed and dated at San Francisco, California, this 15th day of July, 1920.

The condition of this obligation is such that, whereas, lately in the Southern Division of the United States District Court, [182] for the Northern Division of California, First Division, in Admiralty, in the above-entitled cause, a decree was entered in favor of the above-named libelants, from which decree said libelants have appealed to the United States Circuit Court of Appeals for the Ninth Circuit.

NOW, THEREFORE, if the said libelants, as appellants, shall prosecute their appeal to effect, and shall pay all costs on appeal, if said appeal is not sustained, then this obligation shall be void, otherwise to be and remain in full force and effect and execution to issue thereon for the amount of such costs not exceeding Two Hundred and Fifty (\$250) Dol-

lars, at the instance of any persons interested as aforesaid.

AMERICAN INDEMNITY COMPANY.

[Seal] By THEODORE P. STRONG,
Attorney in Fact.

[Endorsed]: Filed Jul. 15, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [183]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 13,310.

DAVID JAMES FLYNN, BARBARA FLYNN
and JOHN FLYNN, Infants, by Their
Guardian and *Prochein Ami*, HONORA
DELLA FLYNN, HONORA DELLA
FLYNN,

Libelants,

vs.

E. A. CHRISTENSON et al.,

Respondents.

Notice of Filing Bond for Costs on Appeal.

To Respondents Above Named and to Messrs. Frank & Mansfield and Frank and Frank, Their Proctors.

You and each of you will please take notice that the libelants above named did, on the 15th day of July, 1920, file in the clerk's office of the above-entitled

court their bond for costs on appeal with American Indemnity Company, a corporation, as surety.

Dated July 17, 1920.

Yours, etc.

ANDROS & HENGSTLER,
LOUIS T. HENGSTLER,

Proctors for Libelants.

Receipt of a copy of the within notice for filing bond for costs on appeal is hereby admitted this 17th day of July, 1920.

NATHAN H. FRANK,
IRVING H. FRANK,
FRANK & MANSFIELD,
Proctors for Respondents.

[Endorsed]: Filed Jul. 17, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [184]

**Certificate of Clerk U. S. District Court to Transcript
of Record.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 184 pages, numbered from 1 to 184, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the case of David James Flynn, Barbara Flynn and John Flynn, Infants, by Their Guardian and *Prochein Ami*, Honora Della Flynn, Honora Della Flynn, Libelants, vs. E. A. Christensen et al., Respondents, No. 13,310, as the same now remain on file and of record in this office; said tran-

script having been prepared pursuant to and in accordance with the praecipe for apostles on appeal (copy of which is embodied in this transcript) and the instructions of the proctor for the libelants and appellants herein.

I FURTHER CERTIFY that the cost for preparing and certifying to the foregoing apostles on appeal is the sum of Eighty Dollars and Fifty Cents (\$80.50), and that the same has been paid to me by the proctor for appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at San Francisco, California, this 23 day of August, A. D. 1920.

[Seal]

WALTER B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk. [185]

[Endorsed]: No. 3542. United States Circuit Court of Appeals for the Ninth Circuit. David James Flynn, Barbara Flynn and John Flynn, Infants, by Their Guardian and *Prochein Ami*, Honora Della Flynn, Honora Della Flynn, Appellants, vs. E. A. Christenson, Hans J. Lunvaldt, Charles E. Sudden, J. H. Baxter, A. Taviera, W. B. Godfrey, Jr., F. M. Delano, Walter V. Rohlfss, R. L. Anderson, Geo. F. Quigley, D. W. C. Tietjen, Cecelia F. Sudden, Henry Brooks, R. Y. Taylor, Robert Sudden, Jas. Johnson Co., a Corporation, Albert Rowe, J. J. Staiger, Edmund Jacobs, R. C. Sudden, Geo.

Johnson, John L. Hubbard, H. Piltz, Louis Poole, Appellees. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed August 23, 1920.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

DAVID JAMES FLYNN, BARBARA FLYNN
and JOHN FLYNN, Infants, by Their
Guardian and *Prochein Ami*, HONORA
DELLA FLYNN, HONORA DELLA
FLYNN,

Libelants and Appellants,
vs.

E. A. CHRISTENSEN et als.,
Respondents and Appellees.

**Order Extending Time to and Including September
15, 1920, Within Which to File Record and
Docket Cause.**

GOOD CAUSE APPEARING THEREFOR: IT
IS HEREBY ORDERED that the time of libelants
and appellants above named, within which to print
the record and file and docket this cause on appeal in

the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby extended to and including the 15th day of September, 1920.

Dated August 13, 1920.

WM. W. MORROW,

Judge of the United States Circuit Court of Appeals,
for the Ninth Circuit.

[Endorsed]: 3542. In the United States Circuit Court of Appeals, for the Ninth Circuit. David James Flynn, Barbara Flynn and John Flynn, Infants, by Their Guardian and *Prochein Ami*, Honora Della Flynn, Honora Della Flynn, Libelants and Appellants, vs. E. A. Christensen et als., Respondents and Appellees. Order Extending Time to and Including September 15, 1920, Within Which to File Record and Docket Cause. Filed Aug. 14, 1920. F. D. Monckton, Clerk. Refiled Aug. 23, 1920. F. D. Monckton, Clerk.